

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(*In Three Volumes.*)

THE PACIFIC COAL AND TRANSPORTA-
TION COMPANY, a Corporation, and M. D.
McCUMBER,

Appellants,

vs.

PIONEER MINING COMPANY, a Corporation,

Appellee.

VOLUME II.

(Pages 337 to 544, Inclusive.)

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

FILED
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(Testimony of Arthur Gibson.)

Q. Is it not a fact that on the ground the embankment, the rise of 8 or 10 feet is about 30 feet north of the initial stake of the claim indicated by point S, and that it is marked wrong the way you have it on the map?

A. That steep bank does not cross the easterly or upper end line of Lyng's claim.

Q. Mr. Gibson, did you draw what is marked "steep bank" on there from recollection, or did you draw it from survey on the ground?

A. Well, I measured some of the points on it and connected in between, but I didn't mark off the easterly part of it.

Q. A good deal of that is just guesswork and not survey at all, a great many of those objects on the map? A. I don't know of any.

Q. Isn't it guesswork when you tried to put the bank between the initial stake and point U?

A. There is no bank there.

Q. Why did you put "steep bank" there and over here, where the willows are?

A. It slopes off, drops off there.

(Witness continuing:) I have no independent recollection of the ground in that vicinity, as to whether there is or is not a steep bank running directly past and directly north of the initial stakes of those two claims. The steep bank does not cross the north end line of the Lyng claim.

Q. When did you first survey the ground claimed, the way you have it on the map?

A. September 30, 1902.

(Testimony of Arthur Gibson.)

Q. Did you see the stakes on Sept. 30, 1902, of the Grant claim? [122]

A. Those stakes that I hadn't previously taken account of, I saw.

Q. Which ones did you read on September 30, 1902?

A. The northerly corner of the Grant claim at point O.

Q. What stakes did you find at the point O?

A. 2x4 pine stake, marked in ink or black paint, 4, and written with pencil N. E. Corner stake W. N. Grant, located January 9, 1899.

(Witness continuing:) While at the point O, the same day, I saw a small willow there. There was a large mound, no writing visible on the willow. It was identified by Mr. Kingsbury as Grant's old stake. I didn't read any other stake that day that purported to be a Grant claim stake.

Q. Had you prior to that time been to the other corners? A. I had.

Q. When had you been to the other corners of the Grant claim, or any of them, what dates?

A. I was to one of the Grant stakes at point P, although I didn't take any note of it, on October 14, 1901, when I surveyed No. 6 Below Good Luck for D. W. McKay.

Q. When were you at the initial stake at point S?

A. That was September 9, 1902, or a few days subsequent, during September, 1902. (Witness continuing:) I don't know whether there was a Grant stake there or not. I have no record of it. I sur-

(Testimony of Arthur Gibson.)

veyed at the point U on September 9, 1902; there was a 2x4 pine stake marked in ink or black paint Figure 2. Marked southwest corner stake, W. N., Grant, locator, January 9, 1899. There was another mound alongside of it, very close to it at that time, about 6½ feet. In September, 1902, I surveyed the point L being the northeast corner of the Grant claim. I found a 2x4 pine stake marked with ink or black [123] paint, figure 3, marked with pencil S. E. Corner stake W¼N. Grant locator, January 9, 1899.

Q. Now, Mr. Gibson, does the No. 6 Below Good Luck claim as you have it drawn on that map, represent the shape of that claim as you surveyed it for McKay on the 14th of October, 1901?

A. No.

Q. When did you survey the Moonlight or Lyng claim first?

A. During September I tied in all of the corners; during the month of September, 1902, but I did not survey it until the early part of October.

Q. Did you ever at any time survey the Moonlight claim or the Lyng claim in the shape you have it on that map?

A. Yes, the stakes were identified to me.

(Witness continuing:) The point R on the map represents one of the corners claimed by D. W. McKay at the time I surveyed No. 6 below Good Luck, October 14, 1901. At that time I surveyed the claim Z1 at the letter P, then to the letter R and then down to I. At that time I drew a map of the Bob Lyng

(Testimony of Arthur Gibson.)

claim as represented by letters S, U, X, Y and R.

Q. When was the first time that you ever tied in the Moonlight or Lyng claim or drew a map of the claim showing it in its present form, U, S, P, X and W?

Mr. SCHOFIELD.—Objected to as wholly immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) The willows and objects on the map were drawn from recollection of early surveys and from present surveys. They show, approximately which portions of the claims is covered by scattered willows or dense willows. [124]

Q. When did you survey in or tie in what you have marked here “dense growth of willows”?

A. There isn’t any dense growth of willows now, that was in the early surveys.

Q. The ground in that vicinity is largely covered with tailings from winter works, is it not, on the surface?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We still renew our objection that there are many objects on that map that are not proven.

The COURT.—Unless counsel specified some particular object, objection overruled.

(Testimony of Arthur Gibson.)

Mr. GILMORE.—I will specify one of them, and that is the so-called Carlson or Nelson location, and the further objection that there is a lot of information on that map that there is no record of before the Court, and the fact that the Carlson location is a relocation of the Nelson Bench, particularly that he drew the Carlson claim over the Napa.

The COURT.—The objection to the offer is overruled and the map may be received in evidence and marked Plaintiff's Exhibit "A." To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Redirect.

I know Mr. Brower and I was recently upon this claim with him. He identified some drill holes and I tied them in. [125] Referring to Plaintiff's Exhibit "A," the holes are shown at point 2, point 3 and point 4. There is another at the upper part of letter S. indicated by figure 2, and another indicated by figure 3, and one indicated by figure 4. I saw those drill holes while I was out there with Mr. Brower.

Q. Were you on this claim in 1904, during the time of the construction of the Anvil ditch?

A. Yes, sir. (Witness continuing:) I surveyed for that ditch; the size I don't just know, because in some places it is wider and other places narrower. Its approximate capacity is about 800 or 1000 miner's inches of water. The water of the ditch is used for mining placer claims belonging to the Pioneer Mining Company. I have

(Testimony of Arthur Gibson.)

been familiar with the mining operations carried on by the Pioneer Company more or less for the past eight or ten years in that vicinity. The Pioneer Mining Company has been mining by hydraulic means. I couldn't tell when they first commenced hydraulicking on No. 1 Bench. I know that a construction gang was on the ditch commencing construction work before I completed the survey. The Pioneer Mining Company have been mining the southwesterly portion of Bench No. 1. I have got notes of the amount mined, but I cannot tell on the map just how much. I don't recall whether it was actual hydraulic mining or by self-dumper and hoist. They used the water from Anvil ditch, but whether for sluicing or ground-sluicing, I do not know. They have been carrying on their mining operations on the southwest portion of Bench No. 1 on a large scale for a couple of years taking their water through iron pipes. The iron pipes are designated on Exhibit "A" and the pipes are correctly represented on the map as far as Bench No. 1 is concerned. I saw some work in the vicinity of the point N at the time I surveyed in 1902; it was prospect holes; there was a [126] prospect hole, 3½ feet by 6 feet and 4 feet in depth.

Q. Did you refresh yourself, refresh your memory from your field-notes in making the answer that you have just made?

A. In the dimensions of it, yes.

Q. When were those field-notes made, Art?

A. At the time of the survey in September, 1902.

(Testimony of Arthur Gibson.)

(Witness continuing:) The prospect hole that I described in that neighborhood was about ten feet from there, northeasterly, something like that.

Q. There is a point designated as "1" on this map, delineating Bench No. 1 Moonlight; what is there at that point, what does that figure "i" represent?

A. It is an old cut or prospect hole.

Q. And state whether or not that was designated to you by any one at the time. A. It was.

Q. By whom?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

Mr. COCHRAN.—I am going to follow it up by the parties themselves.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. By Mr. Stevenson. [127]

Cross-examination.

Q. Are you in the employ of the Pioneer Mining Company as an engineer? A. Occasionally, yes.

Q. Are you at the present time?

A. Yes. (Witness continuing:) I am not under a salary and I have not a contract with the Pioneer.

Q. You put in quite a long time, haven't you, Mr. Gibson, in making maps for this lawsuit for the plaintiff?

A. You might call it a long time; I started on that map this fall, but just worked on it now and then when I had time to spare.

(Witness continuing:) I completed Plaintiff's

(Testimony of Arthur Gibson.)

Exhibit "A" sometime last month; I commenced about a month before, something like that, but I didn't work steady. I made the blue-print that was attached to Jensen's deposition before I started on that map.

Q. Were you in the employ of the Pioneer Mining Company as engineer upon the tunnel?

A. Yes, sir. (Continuing:) I made three trips to one of the tunnels, and four trips to the two tunnels. It is not true that I put in the majority of my time working for the Pioneer Mining Company, but from my time-book I can tell the exact number of days that I worked for the Pioneer. I do not put in one-third of my entire time working for the Pioneer.

Q. Now, did you ever make any other map or blue-print of the ground in controversy than the map that is upon the wall here, Exhibit "A"?

Mr. COCHRAN.—Objected to as immaterial and not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted [128] and the exception was allowed.

(Witness continuing:) I first surveyed No. 6 Good Luck on October 14, 1901, for D. W. McKay. McKay told me he was one of the owners of the claim. He had been working on the ground. He did not point out the corners. The man that was with me, Mr. Elliott, pointed them out. I remember Mr. McKay was working out there once when I went out there, but he was not working there at the time I made the survey.

(Testimony of Arthur Gibson.)

Q. Where did you survey the east end of No. 6 Good Luck, 14th of October, 1901, at what points?

A. X, Z1, Z2, P and R. (Witness continuing:) I made a map of the claim at that time and delivered it to D. W. McKay.

Q. Please examine the exhibit that I hand you and state, if you can, what it is.

A. That is a copy of the original survey that I made for Mr. McKay October 14, 1901. (Continuing:) It is a blue-print of the original drawing.

Q. If the corner of No. 6 Good Luck claim or McKay Bench was at the point R, would it or would it not be within the boundaries of Bench No. 1 as surveyed by you? A. Yes.

Q. So that if Bench No. 1 claim was located by Mr. Jensen in the form you have it on the map, it would overlap part of No. 6 Good Luck or the McKay Bench?

Mr. SCHOFIELD.—Objected to as argumentative.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer, if the Court please, at this time, the blue-print identified by the witness.
[129]

Mr. COCHRAN.—We object to it on the ground that it is irrelevant and immaterial, collateral to any issue involved in this case.

The COURT.—This is offered for the purpose of showing the conflict between No. 6 Good Luck and No. 1?

(Testimony of Arthur Gibson.)

Mr. GILMORE.—Yes, your Honor, and also the the additional purpose of showing the true boundaries of No. 6 Good Luck, and to show that Plaintiff's Exhibit "A" is immaterial.

The COURT.—Objection overruled. The blueprint may be marked Defendant's Exhibit 4. Said exhibit being as follows: [130]

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, have you your note-book with you of the stake readings made on the 14th of October, 1901, with reference to the stakes you found at points P and R?

A. I didn't take all of the stakes.

Q. Have you your note-book which you used that day?

A. Yes. (Continuing:) I have not got all of the stakes that were at those points. At the point P I placed a survey stake there 2x4 pine stake.

Q. What stakes did you find there when you went to point P, on the 14th day of October, 1901?

A. A 1½x2½ pine stake marked southwest corner Bench No. 5. (Continuing:) It represented Bench No. 5 Below Good Luck.

Q. Where does that claim lie?

Mr. COCHRAN.—Objected to as being irrelevant and immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. What other stakes did you find at that point, [132] point P, at that time?

A. A bunch of stakes that did not have any numbering on, No. 6 Bench. (Continuing:) My notes did not show how many stakes were in the bunch.

Q. What did you place there at that point that day?

A. A 2x4 pine stake, scribed SE. Corner Bench No. 6.

Q. Referring to point R on the map, will you

(Testimony of Arthur Gibson.)

please tell me what number that is in your field-notes of that survey, Point B?

A. That is No. 7 in the note-book.

Q. Will you give me the readings of any stakes and monuments taken at point R by you on the 14th day of October, 1901?

A. Well, stake marked Stake No. 4 Olympia Placer claim, and another willow, reading illegible.

(Witness continuing:) My notes do not give the size of the stakes that is all the stakes I found there. I placed a 2x4 pine stake and scribed it Bench No. 6 as a corner of Bench No. 6 Below Good Luck, the claim I was surveying. I took some stake readings northerly from point P, about 450 feet distant, but it has nothing to do with this lawsuit. I have now given to the Court all the stake readings that were made in the vicinity of the points P and R on the ground on October 14th, 1901, by myself that I recollect, or that are noted in my note-book. I next surveyed on the vicinity of Moonlight Springs on May 27th, 1902.

Q. What did you survey on May 27th?

A. The Jerome Fraction. (Continuing:) At that time, May 27th, 1902, I surveyed at point W.

Q. Please read to the Court your stake markings from your note-book [133] of all stakes found at point W on the 27th of May, 1902.

A. 2x4 pine stake, marked with pencil SW. corner of the Riparia Placer claim.

Q. What else?

A. A 2x4 pine stake marked with pencil No. 2

(Testimony of Arthur Gibson.)

Winter Fraction; 1/4-inch by 2-inch pine stake, marked with blue chalk, northwest corner fraction Winter claim on Moonlight creek; willow, no marks; a sod mound around four stakes. There was a 1/4-inch by 4-inch pine stake also, but no markings. Also a 2x4 pine stake marked with pencil stake No. 4 SW. corner of J. Fraction, I scribed it S. No. 4 J. F.

Q. What did that stand for?

A. Stake No. 4 Jerome Fraction.

Q. Did you at that time find any stake or mark or monument that you personally could identify as a corner of Bench No. 1? A. No, sir.

Q. On that day did you make a survey of point U as shown on this map, that is, on May 27th, 1902?

A. Yes, sir.

Q. Please read to the Court all of the stake markings and objects that you saw at that point on the 27th of May, 1902?

A. On the southerly stake or the northerly stake?

Q. How far apart are they? A. 6.7 feet.

Q. Take the southerly group of stakes, they are both marked U, are they not? A. Yes, sir. [134]

Q. Please read them, go ahead and read them?

A. A 2x4 pine stake, writing illegible, claimed to be southeast corner Riparia or No. 1 Moonlight. I think my recollection is that the Jerome Fraction stakes were all placed there before, but I scribed them, 2x4 pine stake.

Q. What did you scribe them?

A. S. No. 3 J. F. That was all at that corner.

Q. Now, take the bunch of stakes 6 feet north of

(Testimony of Arthur Gibson.)

that bunch, at the point U, what stakes did you read that day, if any, on the 27th day of May, 1902?

A. 2x4 pine stake, in earth mound, marked 2, marked in ink or paint.

Q. Is that the one referred to yesterday as being marked in carriage paint, large letter or figure 2 on top?

A. Yes, sir, marked in pencil SW. corner stake, W. N. Grant located Jan. 9, 1899. That is all that I found.

(Continuing:) I have a record of the character of mounds of the group at the point U. There appeared to be no mound at the south bunch of stakes, but there was a mound of earth around the Grant stake but I have no record of the size of it. At that time, however, I don't think the mound was very large. At that time I did not survey to the point V as shown on the map. I did survey to the point A, being the Southwest corner of No. 2 East Fork.

Q. Please tell the Court what stakes, if any, you found at point A on the 27th day of May, 1902?

A. $\frac{3}{4}$ by $1\frac{1}{2}$ inch pine stake marked with pencil Fraction Claim No. 2 Stake. $\frac{1}{2}$ -inch by 3-inch pine stake, marked with paint No. 3 stake Winter Fraction; 2x4 pine stake which I scribed S. No. 5 J. F. That was the same stake I placed there a year before, at the time I [135] surveyed No. 2 East Fork, at that time I only marked those stakes with pencil, they were not scribed.

(Witness continuing:) At the point represented on the map, Plaintiff's Exhibit "A," where the red

(Testimony of Arthur Gibson.)

line and the railroad and the dotted line meet, which I have designated with the figure 13, on May 27th, 1902, there were no stakes, but I erected a stake at that point and scribed it S. No. 2 J. F., meaning Stake No. 2 Jerome Fraction. I did not take any stake readings in the vicinity of figure 13.

Q. What did you call the point in your field-notes shown here on the map, this 13?

Mr. COCHRAN.—Objected to as immaterial and not proper cross-examination.

The COURT.—I don't see where the cross-examination comes in, Mr. Gilmore, you have established a point.

Mr. GILMORE.—I intend to show that this map, Plaintiff's Exhibit "A," is not a correct map of the claims in that vicinity shown by actual surveys by this witness on the ground; that it is not correct in any detail outside of the Grant claim and a portion of the so-called Bench No. 1; the rest is all fixed up for a lawsuit map, and I intend to demonstrate it by cross-examination. I want the witness to identify this corner so that when I get the notes in evidence figure 13 will be shown to represent a certain figure in the notes.

The COURT.—You may proceed.

A. It is represented by figure 2 in my notes. (Continuing:) [136] On May 27th, 1902, I made stake readings at the point B.

Q. What number is B in your field-notes?

A. Indicated by figure 1.

Q. What stakes, if any, did you find at point B on

(Testimony of Arthur Gibson.)

the 27th of May, 1902?

A. The initial stake of the Jerome Fraction and one of No. 2 East Fork bearing location notices, each one in separate box, a 2x4 pine stake which I scribed No. 1 J. F. (Continuing:) I did not make any other stake readings in that vicinity on that day. The next survey that I made after May 27, 1902, in that vicinity, was on September 9th, 1902.

Q. Where was the first place that you began surveying on September 9th, on any of the claims shown on the map, Plaintiff's Exhibit "A"?

A. At the point H.

Q. Now, read to the Court all of the stakes that you found there at the point H, if any, on the 9th or between the 9th and the 30th of September, 1902?

A. Old willow, no writing visible, identified by Mr. C. L. Spanggard as Nelson's stake; $\frac{1}{2}$ inch by 3 inch pine board, blank $\frac{1}{2}$ by 3 inch pine board, marked with pencil, stake No. 3 Lucky Fraction, May 5, 1902; 1 inch by $1\frac{1}{2}$ inch pine stake, 2 with pencil, No. 2 stake Joney Fraction; $\frac{1}{2}$ by $2\frac{1}{2}$ inch pine stake, marked with pencil NW. stake, No. 1, couldn't read placer claim; 2x4 pine stake scribed SW. cor. $\frac{1}{2}$ x3 inch pine stake, writing illegible; $\frac{1}{2}$ x4 inch pine stake, box nailed on same containing location notice, writing illegible; $\frac{1}{2}$ x1 inch pine, marked with black chalk, [137] stake No. 1 SE. Corner, July 25, 1900, and the balance I could not decipher. 2x4 pine stake marked with ink or black paint, No. 5 stake, Winter Fraction, SE. Corner initial stake marked with pencil SE. Cor. was written on it; $\frac{1}{2}$ x6 inch

(Testimony of Arthur Gibson.)

pine stake, with pencil, initial stake of Jemie Fraction Claim SW. Corner stake of P. D. Winter, as per power of attorney for J. H. McCann, July 5, 1902, original location notice for said Fraction was set on top of stake.

Q. Now, Mr. Gibson, what number in your field-notes of your survey made between the 9th and 30th of September, 1902, corresponds to letter G on your map, Plaintiff's Exhibit "A"?

A. The figure 8 represents the point G.

Q. Will you please read the stake markings at point G found by you in the survey of September 9th to 30th, 1902, at point 8, or point G in your field-notes?

A. 2-inch square pine stake, scribed SE. Cor. marked with pencil E. Carlson; $\frac{1}{2}$ x1 inch pine stake blank. Old willow, writing illegible and another old willow writing illegible.

(Witness continuing:) I have no record of the size of those willows. A $\frac{1}{2}$ x2 $\frac{1}{2}$ stake marked with pencil SE. Cor. stake Zero claim; $\frac{3}{4}$ x2 inch pine stake marked with pencil No. 1 stake Joney Fraction claim, and the balance I could not decipher; willow marked with pencil No. 3 NW. Cor. No. 1 Above Discovery Bench Fraction $\frac{1}{2}$ x2 $\frac{1}{2}$ pine stake marked with pencil Stake No. 2 Lucky Fraction, May 5, 1902; $\frac{1}{2}$ x2 inch pine stake blank, a mound around it; 2 inch pine stake scribed S. E. C. and then Napa; drift-wood stake, written with pencil but writing illegible.

The scribed stakes were not survey stakes, they had [138] no nail on top in the first place, and

(Testimony of Arthur Gibson.)

they were there when I made my first survey, but I don't know of my own knowledge whether they were put there by surveyors or not.

On the 9th of September I surveyed at the points J and N, as shown on plaintiff's map, Exhibit "A." The point N is represented in my field-notes by the figure 16.

Q. Will you give the readings of the stakes that you found at point N, reading any that you put there yourself, on September 9, 1902?

A. 2-inch square pine stake, scribed NW. Cor. Two willows one broken in two, no writing visible on either, small stone mound around same. A 2x2 pine stake 2x2 pine stake compare in size, character and its inscription with a similar stake found at point G. Those stakes were there when I went there in September 9th.

Q. When did you survey the point marked J if you ever did?

A. That was surveyed on June 23, 1901, while I was surveying No. 2 East Fork claim for Schue and Williams.

Q. Will you please give me the readings that you found there on June 23, 1901?

A. The point J on the map was indicated in my field-notes by the figure 5. At that time I did not take the size of the stakes or the kind of wood, just the inscription as follows: NW. corner stake of Moonlight claim No. 2, located January 7, 1899, E. O. DePue by C. L. Spanggard; another stake marked stake No. 2 NW. corner, located January 7, 1899; an-

(Testimony of Arthur Gibson.)

other stake no name given; another stake scribed S-4 N. W. C. Napa.

Q. Please give the stake readings at point K as found by you [139] in your survey of June 23, 1901?

A. One stake with some old writing on it. All I could read was Span. Another stake marked NW. Cor. of Excelsior placer mining claim, located Feb. 7, 1900, by George L. Rhodes. Two stakes, one old and one new, with the same markings on. Stake scribed S. E. C. E. P. M. C.

Q. Do you know what that stands for?

A. Southeast corner Excelsior placer mining claim.

(Witness continuing:) I also found stake No. 2 of Oakland placer mining claim, southwest corner stake, Mrs. M. E. Mourray that was lying on the ground. Another stake that was scribed initial S-1 N. E. C. of the Napa; that was lying on the ground too.

Q. Did you tie any stakes or read them, lying east of point L, in the neighborhood of sixty or one hundred feet? A. I did.

Q. Will you please tell me what number in your field-notes illustrates that point?

A. Which point?

Q. That point I have asked you about, lying from 60 to 100 feet easterly from the point L?

A. It is indicated in my field-notes by the figure 14; and lies 62.9 feet from L.

Q. Will you please read to the Court the stakes that you found at that point, as indicated by figure

(Testimony of Arthur Gibson.)

14 in your note-book in September, 1902?

A. Old willow, no writing visible; it was blazed off on two sides; old willow, three face, no writing visible; 2x21½ pine stake scribed NE. Cor., marked with pencil E. Carlson claim. A stone slab 16x31½x20 standing up against last named stake; 11¼x2 inch pine [140] stake, that was a new stake, marked with pencil E. Carlson NE. Cor. stake. That is all.

Q. Mr. Gibson, did you ever survey from the point 14 to the point J as indicated by Plaintiff's Exhibit "A"? A. No, I did not.

(Witness continuing:) Approximately it is about 100 feet. I have surveyed the distance between points G and H, that distance is 608 feet.

Q. And the place where the Carlson claim is shown on this map, Plaintiff's Exhibit "A," is 608 feet west of where you found the Carlson claim?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you make any plat of your field-notes illustrating the lines of the different claims that are now represented on this map, Plaintiff's Exhibit "A," at the time or about the time, you made the survey?

A. I did to a certain extent.

Q. This plat that you have handed me, what page is that in your field-book?

A. Page 20, book No. 6.

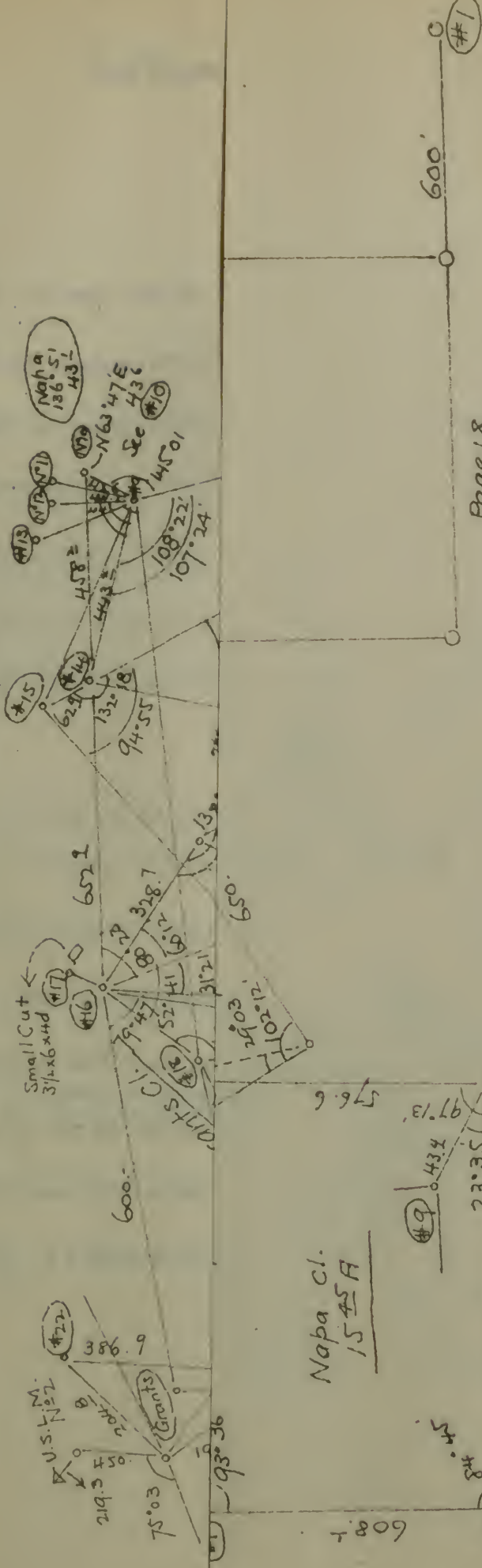
Mr. GILMORE.—I offer, if the Court please, page 20 of the witness' field-book No. 6, together with

(Testimony of Arthur Gibson.)

pages 18, 19, 21, 22 and 23, being the plat identified by the witness and the stake readings that the witness has referred to in his cross-examination.

The COURT.—The book will be admitted in evidence, marked Defendants' Exhibit 5; the plat referred [141] to on page 20 will be received in evidence and marked Defendants' Exhibit 6. Said exhibit being as follows: [142]

Defendants Exhibit "5' & 6"



Bench N°1 Moonlight Creek
Cape Nome R.D. Alaska.
Locd. Jan 3rd 1899 by Andrew Jensen

Grant & Napa Claims
on Moonlight Creek, C.N.R. D. Alaska
Sept. 30th 1902

Defendant's Exhibits "586"

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- 2'x4' pine. S.T. Mpⁿ N^o 5tⁿ / Stone md /
- 2'x4' pine. S.T. MSⁿ E Corner Bⁿ N^o 6ⁿ / 2 old willows, wg. ill. / large sod. md.
- 2'x4' pine empty box nailed onto same, no wg. / Large sod md
- 4 Lime stone slabs on top.
- 2'x4' pine blank / Old willow, 2f blank / Sod md.
- 2'x4' pine, Mpⁿ N.W. Cor. Riparia pl. mine / Small md.
- 2'x4' pine. MIⁿ 2ⁿ Mpⁿ S.W. Cor St. W.N. Grant locⁿ Jan. 9 - 1899 /
ge sod md /
- 2'x4' pine. Mpⁿ wg. ill. / 2'x4' pine S.T. Mⁿ S N^o 3 J.F.ⁿ /
bc.
- 2'x4' pine, ST. Msⁿ S N^o 2 M.B.ⁿ /
- 2'x4' pine, ST. Msⁿ S N^o 4 M.B.ⁿ /
- 2'x4' pine. ST. Msⁿ S 4 NAPA / Driftwood st. wg. ill. / Willow fresh wg.
- NW. Corn st. Eagle cl. loc^d Jan. 3 - 1902. Jas. Horey, W^m ~ ? /
H²O L. N. on top of st. in slit
- 2'x3' pine. MIⁿ 4ⁿ N.E. Cor st. W.N. Grant. Locⁿ Jan 9th 1899 / small
- low, blank / Both above st^s in large md / Willow no wg visible identif^d
- Mr Kingobury as Grant old st. /

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(#1) Old willow, 2f. no wg. visible, identified by Mr. G. L. Spang.
 and on the Nelson st. / 1/2 x 3/4 pine board blank / 1/2 x 3/4 pine board
 Mp. N. 2. Lucky F. May 5th 1902 / 1/2 x 1/4 pine, Mp. N. 2. st. Honey F. /
 1/2 x 1/4 pine, Mp. N. W. st. - 1/2 pl. cl. / 2 x 2 pine, Mg. S. W. Cor. / 1/2 x 3/4 pine
 no visible / 1/2 x 3/4 pine, box nailed to same contg a L.N. wg. illegible /
 1/2 x 3/4 pine, Mp. N. 1. SE. Cor. July 25, 1900. / 2 x 2 pine, M. N. 5 St.
 Winters F. SE. Cor. Initial st. / Mp. SE. Cor. / 1/2 x 3/4 pine board, Mp. N. Inl.
 st. of semi F. CE. 3 W. cor., stacked by P. D. Winters as per P. of A. for J. H.

W. on July 3rd 1901. Orig. L. N. for said F. 2 in slit on top of st. /
 (12) 2 x 4 pine, 7 ab. ga. Mp. S. W. cor. of the Riparia pl. mine. / Old willow

no wg. visible / 2 x 2 x 1/2 pine blank / 2 x 4 pine S. T. Mp. N. 2. st. S. W. Cor. of
 Jerome F. / 2 x 4 pine, M. N. 2 (unclear) Winters F. / 1/2 x 1/4 pine M. N. W.
 2 x 4 pine, S. T. M. S. N. 2. M. B. /
 Cor. st. of Winters F. of Moonlight / 1/2 x 4 pine, blank, Cor. thd. & 3 stones

(#3) Old willow, 4f. no wg. visible, 2 x 4 x 24 pine wg. illegible /

(#13) 2 x 4 pine S. T. M. S. 3 Cor. Bench N. 6 / Old willow, fresh wg. Mp. Jany 1899 N.
 st. Initial Bench cl. N. 2. top. N. bel. Dray on (initial) cl. Loc. 3. 1899 Old Skeler Loc.

(#5) 2 x 4 pine S. T. 4p. Initial st. / S. N. 5 J. F. / 3/4 x 2 pine, Mp. F. CE. N. 2. st. / 1/2 x 3/4
 pine, M. N. 3. st. Winters F. / 2 x 4 pine, blank / 1/2 x 3/4 pine, Mp. N. 2. SE. Cor. of Jerome
 1/2 x 3/4 pine, Mp. N. 1. st. of semi F. CE. N. W. Cor. st. / July 25, 1902 / 2 x 3 pine M.
 Winters F. N. 1. st. / N. 1. st. / Ston md.

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(#7) Willow 4f. Mp. N. 2. N. 2. 1. Dray cor. / Willow writing illegible / 1/2 x 3/4 pine Mp. N. 1. st.
 zero cl. Electric G. Loc. 2. Jan. 1901. 33. Each side this st. 1326' 1/2 Loc. 2. G. L. Hamilton
 tin can on top contg. L. N. for said claim.

(#8) 2 x 2 pine, M. S. E. Cor. / E. Carlson / 1/2 x 1/4 pine, blank / Old willow wg. ill. / Old willow
 wg. ill. / 1/2 x 2 pine Mp. S. E. Cor. 2 zero cl. / 1/2 x 2 pine Mp. N. 1. st. the Johnny F. cl. ? ill.
 willow Mp. N. 3. N. W. cor. N. 2. ab. Dray 8th F. / 1/2 x 2 pine, Mp. N. 2. 2. Lucky F. May
 5th 1902 / 1/2 x 2 pine blank / md. / 2 x 2 pine, M. S. E. Cor. N. 2. Driftwood st. Mp. N. 2.

(#9) 2 x 4 pine, S. T. Mp. N. 2. st. / Stone md.

(#10) 3/4 x 1 1/4 pine, repl. E. Carlson old st.

(#11) 3 willow & 1/2 x 2 pine, wg. ill.

(#12) Bunch of st. no bearing /

(#13) Eagle cl. E. Cor. st.

(#14) Old willow, no wg. visible, 2f. old willow 3f. no wg. visible, 2 x 2 pine M. N. E. Cor.
 Mp. E. Carlson cl. / Stone slab 16 x 3 1/2 x 20 standing up against last.
 named st. / 1/2 x 2 pine (new) Mp. E. Carlson N. E. Cor. st.

(#15) 2 x 4 pine, M. N. 3. Mp. SE. Cor. st. W. N. Grant Loc. 3 Jan. 9. 1899 / 2 x 2 pine Mp.
 N. 2. M. N. 1. F. / Large md. / Old willow, if. no wg. visible.

(#16) 2 x 3 pine, M. N. W. Cor. / 2 old willows (broken) no wg. visible on either / small stone

(#17) Old Driftwood st. M. S. SW. st. E. P. M. C. 1/2 x 2 on top / 3/4 x 2 pine.

nailed to 1st st. Mp. C. J. Jorgensen N. W. Cor. st. / md.

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(#18) 2 x 4 pine, S. T. Mp. N. 2. st. / Stone md.

(#19) 2 x 4 pine, S. T. M. S. E. Cor. B. N. 6 / 2 old willows, wg. ill. / large sod md.

(#20) 2 x 4 pine empty box nailed onto same, no wg. / Large sod md
 with 4 Lime stone slabs on top.

(#21) 2 x 4 pine blank / Old willow, 2f. blank / Sod md.

(#22) 2 x 4 pine, Mp. N. W. Cor. Riparia pl. mine / Small md.

(#23) 2 x 4 pine, M. N. 2. Mp. S. W. Cor. st. W. N. Grant Loc. 3 Jan. 9. 1899 /
 Large sod md.

(#24) 2 x 4 pine, Mp. wg. ill. / 2 x 4 pine S. T. M. S. N. 3 J. F. /
 bc.

(#25) 2 x 4 pine, S. T. M. S. N. 2. M. B. /

(#26) 2 x 4 pine, S. T. M. S. N. 4. M. B. /

(#27) 2 x 4 pine, S. T. M. S. 4 N. 2. Driftwood st. wg. ill. / willow fresh wg.

Mp. N. W. Cor. st. Eagle cl. loc. 3 Jan. 3. 1902. Jas. Horey, W. N. 2 /

(#28) 2 x 2 pine, M. N. 4. N. E. Cor. st. W. N. Grant Loc. 3 Jan. 9. 1899 / small

willow blank / Both above st. in large md. / Willow no wg. visible identified
 by Mr. Kingsbury as Grant old st.

(Testimony of Arthur Gibson.)

Q. Now, please examine the blue-print that I hand you and state who made the blue-print.

A. I did.

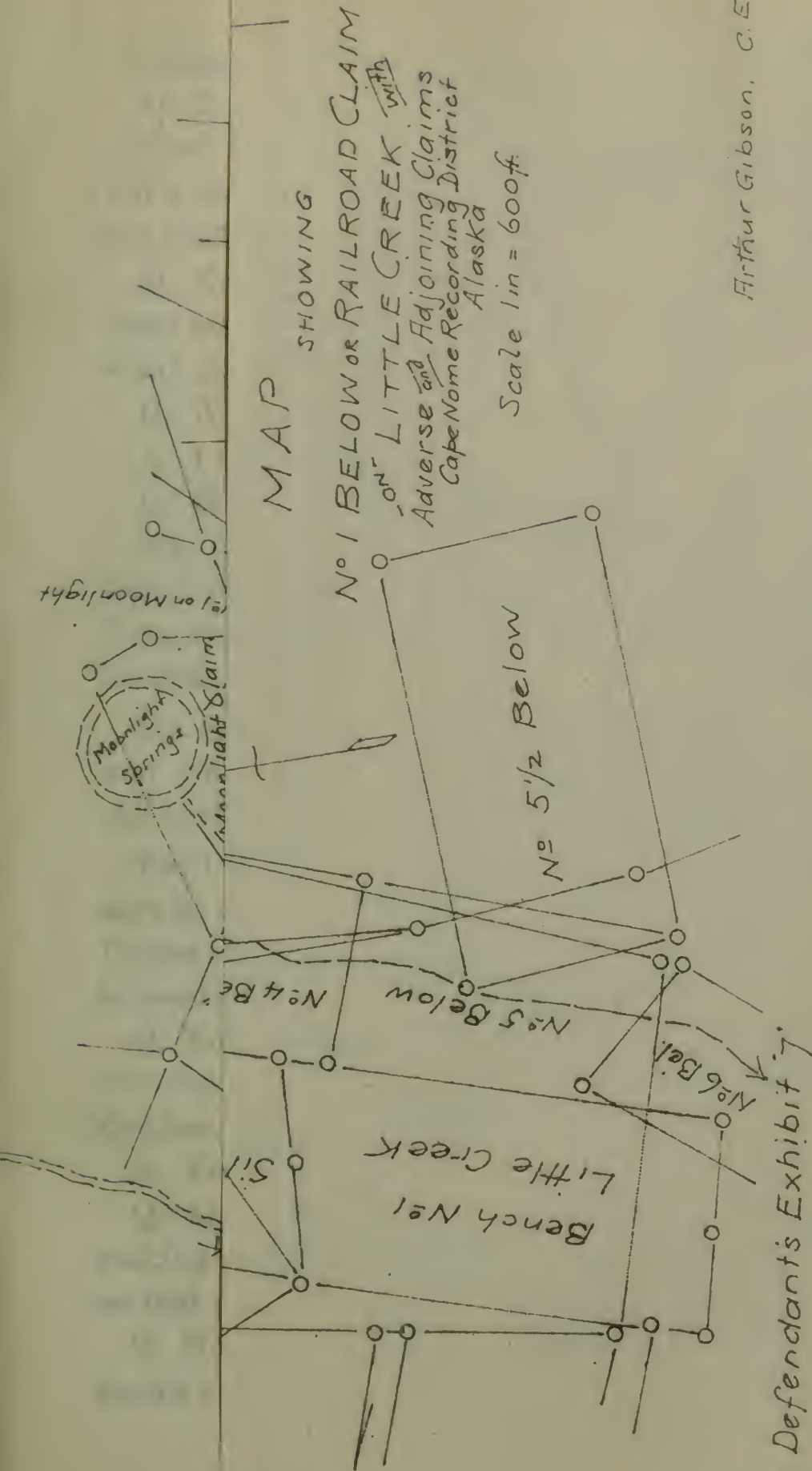
Q. And state if it was made by you from surveys upon the ground of various points, objects and claims therein depicted. A. It is.

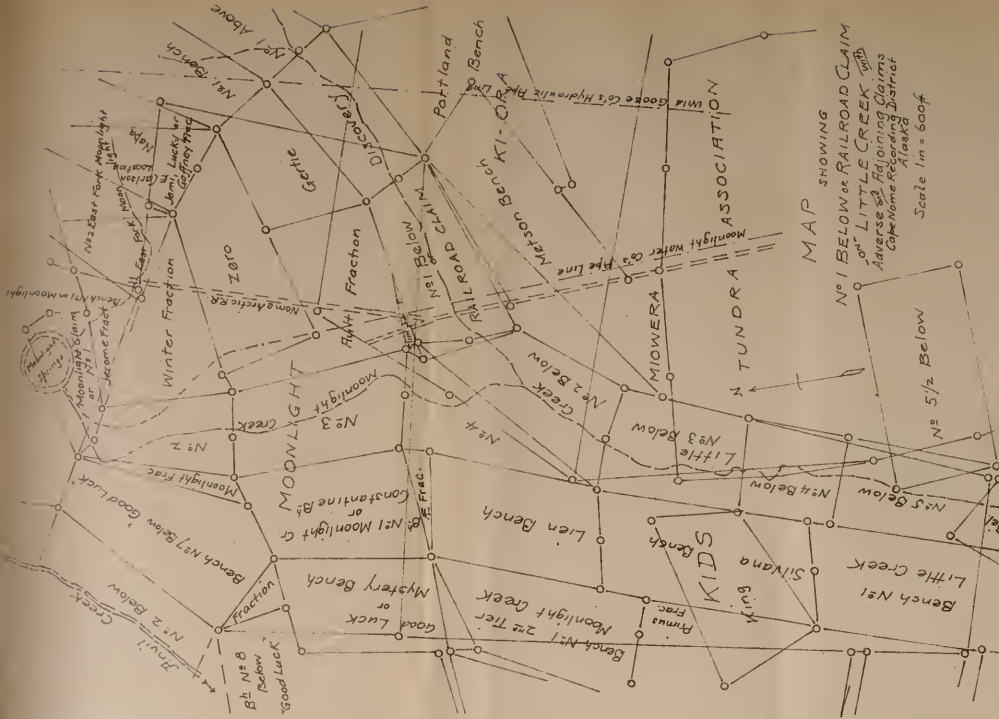
Mr. GILMORE.—I offer in evidence this blue-print, if the Court please, for the purpose of showing that the claims depicted on exhibit “A” are not in their correct position according to the surveys made by the witnesses on the ground.

Mr. COCHRAN.—We object to it, as not tending to contradict the witness, being incompetent, irrelevant and *material* and not proper cross-examination.

The COURT.—Objection overruled. Map may be received in evidence and marked Defendants’ Exhibit 7. Said exhibit being as follows: [145]

Arthur Gibson, C.E.





Arthur Gibson, C.E.

Defendant's Exhibit 7.

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, in the plat that has just been offered in evidence what points on this map, Plaintiff's Exhibit "A," corresponds to the lower end of the Carlson claim on the blue-print? A. H and G.

Q. Now, Mr. Gibson, please examine the exhibit I hand you, being a blue-print, and tell me if you know what that is? A. Yes, sir.

Q. Who made that map or blue-print, if you know?

A. I did. [147]

Q. When did you make it? A. 1902.

Mr. GILMORE.—I offer it in evidence, if the Court please, for the purpose of showing the Bob Lyng or Moonlight claim as surveyed by the witness in 1902.

Mr. SCHOFIELD.—Objected to as incompetent and immaterial. Witness has not stated that it shows the boundaries of the Bob Lyng claim.

The COURT.—The witness drew those lines, if he says he made it he ought to know what it represents. Unless you can prove those lines are correct, it won't be received.

Q. Now, does this blue-print represent No. 2 Below Good Luck as surveyed by you on the 14th of October, 1901, for D. W. McKay, the owner?

A. Yes, sir.

Q. At what time did you get your information for making the Moonlight claim in the shape it is given on that plat? A. I never did.

Q. How did you come to draw it at that time as shown here?

(Testimony of Arthur Gibson.)

A. That was left over after I surveyed for D. W. McKay.

Q. You made that from guess, did you?

A. He claimed up to there.

Q. Will you tell me, Mr. Gibson, how you got the courses and distances to the fraction of a foot between the stakes? A. By measuring.

Q. Oh, then, you did survey it?

A. I surveyed McKay's claim.

Q. Did you survey the Bob Lyng's claim? [148]

A. No, sir, I did not.

Q. How did you get the distances from the point of the McKay Bench over to what is called the initial stake, 209.9 feet?

A. That is the survey of Bench No. 1 Moonlight.

Q. This course here? A. Yes.

Q. You got that at the time you surveyed Bench No. 1? A. Yes.

Q. When did you do that? A. September, 1902.

Q. At that time did you survey all of the points shown on this map? A. No, not at that time.

Q. Did you at that time, or prior to that, on the 14th of October, 1901, survey to all the points indicated on this map or blue-print?

A. Yes, if you include the 30th of September, I did.

Q. And from this survey that you made did you make this map showing No. 6 Good Luck, Moonlight claim and Bench No. 1?

A. Well, the Moonlight claim, as I said, is what was left over after I surveyed for McKay.

Q. That is, the portion that isn't included within

(Testimony of Arthur Gibson.)

the No. 6 Good Luck, that you marked here, is the Moonlight claim? A. No, sir.

Q. What portion is it?

The COURT.—The witness I think has said that it was left over after he surveyed. [149]

Q. I want to go a little further, did you deliver this map to the plaintiff the Pioneer Mining Company, or a copy of it? A. No.

Q. Never did? A. Not that I know of.

Q. Isn't it a fact that you made a map for the Pioneer Mining Company showing the boundaries of the Bob Lyng claim just as they are given on this plat? A. I don't think I have.

Q. Didn't you give the Pioneer Mining Company a copy of it in 1902 or 1903? A. No, sir.

Q. Please examine Defendants' Exhibit No. 7.

A. Yes, sir.

Q. And tell me if it was not a fact that Bob Lyng and Moonlight claim on the exhibit is identical with the Bob Lyng or Moonlight on this one that I hand you?

Mr. SCHOFIELD.—Objected to as incompetent and immaterial.

The COURT.—You have gone far enough, objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer this blue-print in evidence, if the Court please, and offer to show that so far as the Bob Lyng or Moonlight claim is concerned it is an exact copy of Defendants' Exhibit 7.

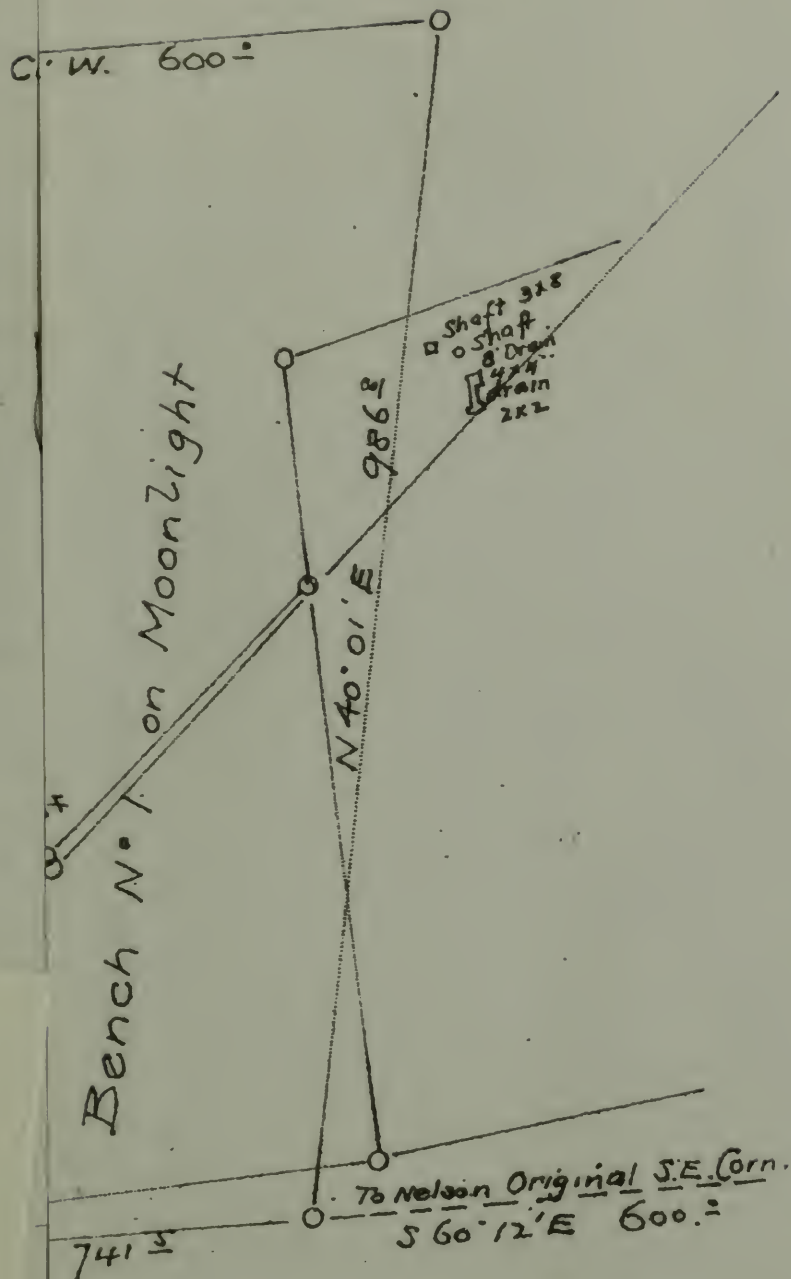
(Testimony of Arthur Gibson.)

Mr. COCHRAN.—We resist the offer on the ground that [150] it is immaterial and irrelevant.

The COURT.—The offer is denied. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask the clerk to mark the blueprint or map offered, Defendants' Exhibit 8 for Identification.

The COURT.—The clerk may mark it Defendants' Exhibit 8 for Identification. Said map or exhibit being as follows: [151]



Surveyed by Arthur Gibson C.E.

Map
showing claims
adjoining
Moonlight Claim
Cope Name Recording District
Alaska.
Scale 1 in = 100 ft.



representants to exhibit 'S' for identification.

Surveyed by Arthur Gibson C.E.

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, is there any claim marked on Plaintiff's Exhibit "A" drawn in deep or black lines that correctly represents any claim as surveyed by you on the ground, if there is, please tell me which one? A. I surveyed them all on that map.

Q. Your answer is not responsive, do you understand the question?

A. If you state the corners of any particular claim.

Q. No, sir, I am referring to the claims as depicted here in black lines or letters, is there any claim on that map drawn by you from actual surveys on the ground? A. There certainly is.

Q. Which one?

A. They are all drawn from actual surveys.

Q. When did you ever survey No. 6 Below Good Luck in its present form as shown on that map, running from Z-1, Z-2, P and Y?

Mr. SCHOFIELD.—Objected to as having already been gone over.

The COURT.—Objection sustained, to which ruling of [153] the Court the defendants then and there excepted and the exception was allowed.

Q. You have taken a great interest in this lawsuit, haven't you?

A. I always take an interest in my work.

Q. You attended the taking of depositions in this case, did you not?

A. I did at the request of the attorneys.

Q. You attended the taking of the deposition of Mr. Kingsbury in my office just before the close of navigation? A. I did.

(Testimony of Arthur Gibson.)

Q. And sat alongside of counsel and made suggestions of what questions to ask, didn't you?

A. Made one suggestion and you all jumped on to me for it.

Q. And you coached the attorneys did you not with information of what to ask Mr. Kingsbury when the deposition was taken?

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial and assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you not coach the attorneys at that time in the same deposition for the purpose of informing them or giving them questions to ask Mr. Kingsbury?

Mr. LOMEN.—Objected to as immaterial, incompetent and irrelevant and assuming something not in evidence.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [154]

Q. Were you paid for appearing at my office and suggesting questions to counsel to ask Mr. Kingsbury at the time of the taking of the deposition, at two different times?

A. Whatever work I do for the Pioneer I charge up the time.

Q. Just answer the question, were you paid or are you to get paid for those two days' work?

A. I presume I will get paid for what work I do.

(Testimony of Arthur Gibson.)

I always get paid.

Mr. LOMEN.—Answer the question.

Q. Do you expect to be paid if you have not already been paid? A. Yes, sir.

Q. Please examine this exhibit that I hand you and tell me, if you know, what it is? A. Yes, sir.

Q. Do you know what it is? A. Yes, sir.

Q. Who made it? A. I did.

Q. And state whether or not it was made from surveys made by yourself? A. It was.

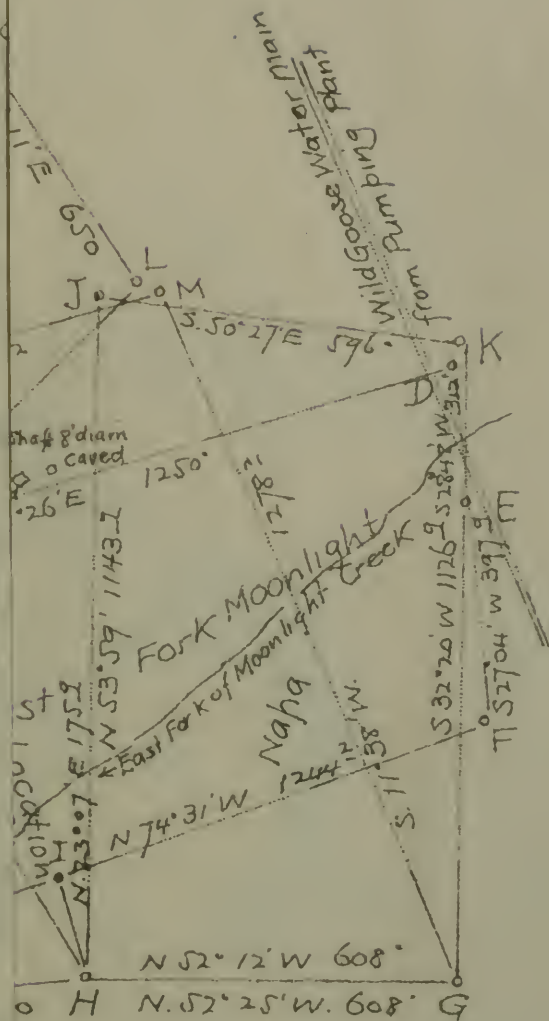
Q. When? A. 1901 and 1902.

Mr. GILMORE.—I offer this exhibit that I have just handed to the witness in evidence.

Mr. COCHRAN.—We have no objection.

The COURT.—It may be received in evidence marked Defendants' Exhibit 9. Said exhibit being as follows: [155]

M
 Claim
 East
 Cape No
 30



27

1



Defendant's Exhibit "9"

(Testimony of Arthur Gibson.)

Q. Do you know Mr. McCumber, the defendant in this lawsuit? A. I do. (Continuing:)

him in September, 1908, he and I alone being present on the ground.

Q. I will ask you if, while out there on the ground in controversy, whether or not you stated to Mr. McCumber, "I cannot understand how the No. 1 Bench could overlap the Moonlight claim or Good Luck claim; and the Jerome Fraction is in there too," or words in substance to that effect.

A. No, I never said any such a thing.

Q. Did you state that in substance to Mr. McCumber? A. No.

Redirect Examination.

Q. What did you say in that conversation, if you had any?

A. Mr. McCumber asked me what my opinion was of the fraction between the Moonlight No. 1 and the Grant claim, and I told him to stay off the conflict. He apparently had a lease on the Grant claim; I told him to stay off the conflict and save his money.

(Continuing:) That was in October, 1908. We were standing somewhere there on top of the terrace where the cabin is, or below it on the ground in conflict.

Q. Now, Mr. Gibson, the map, Exhibit 7, was that made for the Pioneer Mining Company?

A. No, sir.

Q. Now, this last exhibit, Defendants' Exhibit 9, state to the Court whether or not Bench Claim No. 1 Moonlight as shown on that exhibit is any different

(Testimony of Arthur Gibson.)

from the claim as shown upon Plaintiff's Exhibit "A."

A. It shows the Moonlight Bench No. 1 exactly as surveyed in [157] 1902 as it appears in Plaintiff's Exhibit "A."

Q. Now, the Carlson location, what represents the Carlson location upon that plat, what figures or letters represent the Carlson location?

A. H, N, M and G.

Q. Now, on Defendants' Exhibit 7, Mr. Gibson, referring to what is called the Carlson claim here, what do those two triangular lines represent running northerly from below where the writing Jemie, Lucky or Gaffney Fraction is, what do those lines represent?

Mr. GILMORE.—Objected to as being wholly immaterial.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. The Carlson location as indicated, the Carlson lines as I know them on the ground.

Q. Both lines? A. Yes.

Recross-examination.

Q. As you saw them on the ground, you mean now, within the last few years? A. No, at that time.

Q. For whom did you make the map marked Defendants' Exhibit 9? A. What?

Q. For whom did you make the map marked Defendants' Exhibit 9?

A. For Fred Williams and Billy Schue and Rutter, owners of No. 2 East Fork. [158]

(Testimony of Arthur Gibson.)

Re-Redirect Examination.

Q. You started to state something to Mr. Gilmore in relation to some stake that you didn't testify to, do you recall what stake that was, Mr. Gibson?

A. I do.

Q. Just state what stake you referred to and what it was and where it was?

A. It was a stake at 8, an old willow, two face, no writing visible, identified by Mr. C. L. Spanggard as a Nelson stake.

Mr. GILMORE.—I move to strike out that part of the answer with reference to what Mr. Spanggard told him as hearsay and not responsive.

The COURT.—The motion is denied. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Recross-examination.

Q. You say that you did not make map, Defendants' Exhibit 7 for the Pioneer Mining Company?

A. No, sir.

Q. You used that exhibit in your affidavit in the case of Pioneer Mining Company vs. J. C. Brown, did you not?

Mr. COCHRAN.—Objected to as immaterial and not recross.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [159]

Testimony of Thomas Lyle, for Plaintiff.

THOMAS LYLE, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Thomas Lyle. I live in Nome. I have lived in Nome twelve and a half years with the exception of two winters in 1900 I went out and came back in 1901; went out in the fall of 1903 and came back in 1904. My business is mining. Have been engaged in mining since coming to Nome. I know the ground in the vicinity of Moonlight Springs somewhat. I know the claim called No. 2 East Fork of Moonlight. I first knew or became acquainted with that claim in June, 1899. Jess Rutter told me about the claim. I went out early in June with him to do some work, put some drift poles on the claim.

Q. Step up to the map upon the wall, Mr. Lyle, and point out to the Court the westerly boundary line. (Referring to Plaintiff's Exhibit "A.")

A. Right here.

Q. At B?

A. Yes, the NW. Corner at C; the SW. Corner at A. (Continuing:) I think it was on June 7th, the day before the whalers came in, that year, 1899, that I went out with Rutter to set other stakes upon that ground. At that time I was down to the point 8, being the SW. Corner of No. 2 East Fork Moonlight. After the stakes were set we came back to that corner.

Q. Now, state to the Court whether or not you saw any other stake or stakes near where you placed the southwest corner of No. 2 East Fork Moonlight.

(Testimony of Thomas Lyle.)

A. In going out to the claim, we came to this stake here.

Q. Came to a stake where?

A. At the SE. Corner of Moonlight No. 1 Bench.
[160]

Q. How far was that from where the southwest corner of No. 2 East Fork Moonlight was?

A. Well, there was no stake at that time at the southwest corner of No. 2 Moonlight.

Q. How far from that stake of Bench No. 1 on Moonlight, the southeast corner, did you state the southwest corner of No. 2 East Fork Moonlight was?

A. About 50 or 60 feet. Rutter set the stakes there himself.

(Witness continuing:) He set it in. I examined the stake which I found at the point V; it was a stake 2½ to 3 feet high, blazed on one side with an ax or hatchet.

Q. Did it have any marks upon it?

A. Marked with black lead pencil SE. Corner No. 1 Bench Moonlight.

Q. Now, have you been out on that ground since that time? A. Yes, several times.

Q. Have you been there recently?

A. About six weeks ago.

Q. State whether or not you were at the southeast corner of Bench Claim No. 1 on Moonlight?

A. I was. (Continuing:) I was also at the southwest corner of No. 2 on East Fork Moonlight.

Q. State to the Court whether or not the southwest corner of No. 1 Bench on Moonlight, as you saw it

(Testimony of Thomas Lyle.)

about six weeks ago, was in the same position as where you saw it in 1899 on the 7th day of June.

A. About the same position, as near as I could judge, being a long time ago.

Q. What stake, if any, did you set on the westerly boundary line of No. 2 East Fork Moonlight? [161]

A. Set the northwest corner stake, helped to set the initial stake, that is put a new initial stake in there in place of the one that was there when we went out.

(Continuing:) We set the initial stake with reference to marks of other claims at the point B as shown on the map. We lined it off from the southeast corner stake of Bench No. 1 Moonlight to a stake that was away up on the hillside.

Q. What stake was that on the hillside?

A. I didn't know at that time.

Q. Did you after?

A. About a month afterwards I went past that corner.

Q. Did you ascertain what corner it was?

A. I did.

Q. What corner was it?

A. Northeast corner Bench No. 1 Moonlight.

Q. What did you line that initial stake of Moonlight Bench No. 2 with?

A. Lined it with the east side line of this No. 1 Moonlight.

(Witness continuing:) After putting in the initial stake there we put in the northeast corner stake of No. 2 Moonlight; we also put a stake at the point C.

(Testimony of Thomas Lyle.)

Q. Now, from the point C, where you put this stake, could you see from this point here, could you see the northeast corner stake of No. 1 Bench?

A. I could not.

Q. Why?

A. On account of a ledge or bank, whichever you like to call it, right at the northward of that stake.

Q. Have you been familiar with this corner stake C of No. 2 East Fork Moonlight since?

A. Yes. [162]

Q. Is it there yet?

A. Not the one that I placed there.

Q. Is that corner still marked?

A. That corner as near as I could get to it by that bank at the present time.

Q. Do you know one Andrew Jensen?

A. I know him by sight, I wasn't very well acquainted with him.

Q. Did you see him in the vicinity of this claim?

A. I didn't.

Q. When you were out there in June, 1899, state whether or not you saw any work that had been done recently near or within the vicinity of where you placed the northwest corner stake of Bench No. 2 or No. 2 East Fork Moonlight?

A. To the west. (Continuing:) I saw fresh work, it was about between 75 to 100 feet to the west of the Northwest corner stake of No. 2 East Fork Moonlight, and I should say a little to the west of the railroad, where the railroad is at the present time, somewhere right in this vicinity, near where the figure 1

(Testimony of Thomas Lyle.)

is shown on the map. I was out there one day when Captain Hill had an option on No. 2 East Fork Moonlight.

Q. When were you next on the claim after putting the stakes on No. 2 East Fork Moonlight?

A. On the 7th of July, 1899.

Q. How do you fix the date?

A. Well, I was bound for Boulder Creek, with a man named Tom Duffy; I don't know as I can fix the time by anything.

(Witness continuing:) We were in the vicinity of the claim; we [163] came over down here and across over to this bald knoll above the springs and then dropped into Anvil about 5 Above.

Q. At that time did you make any examination of any stakes of the Moonlight Bench Claim No. 1?

A. Yes, I did. (Witness continuing:) We passed up here through these stakes here, and at that time I went up to see what stakes those were up on the hillside; that was the time when I noticed it was the northeast corner, and there was a willow stake between 2 and 3 feet high, I don't know the diameter, maybe 1½ or 2 inches. It was blazed off with an ax, marked with a lead pencil, marked NE. Corner Bench No. 1 Moonlight. It had no other marks on it. There was another stake standing alongside of it.

Q. Was there any marks on that stake?

A. Just mentioned NW. Corner, don't know what claim it was for.

Cross-examination.

I was mining in June, 1899. I came here in March,

(Testimony of Thomas Lyle.)

1899 by dog team. I did not stake any claims in the vicinity of Moonlight. I was out on the ground about six weeks ago. I did not see any of the old original stakes. I saw a stake at the NE. Corner of Bench claim No. 1 on Moonlight and I believe it is in the same position as when I saw it in 1899. I came here in March, 1899, left a man here to stake for me and went back to St. Michael for more grub; he was the man who was a witness on location notice of No. 2 East Fork Moonlight, his name was [164] Jack Kail. On the 6th of June, 1899, I went out to help him out with his stakes and staked the claim in the proper manner as near as we could. We took six stakes out there that day and placed them. We started in at point B on the map, Plaintiff's Exhibit "A," and went north, I went north and Jess Rutter went south. We passed close by the point "A" and stopped at B to line up our initial stake. The ground is higher at the point C than it is at the point V. It is kind of flat down between V and B, not much difference there at all. We were lining up to connect with the east side lines of the claims. There was only two stakes on the claim at that time. The initial stake a willow stake, and another. There was no stake at point A or C. There was a stake at point B. Jess Rutter came down to A and I went up to the point C. We stopped at point B to find the initial stake as it was up amongst some willows. There was a willow stake at the point V about 2½ or 3 feet high and about 2 inches in diameter, with writing on it "SE. Cor. Bench No. 1 Moonlight."

(Testimony of Thomas Lyle.)

Q. All written out?

A. All written out. (Continuing:) I didn't see that stake when I was out there recently. I have lived in this vicinity ever since 1899. I have been out there on the claim several times. I wasn't looking for stakes always on the Bench claim, I was interested more with that No. 2 East Fork Moonlight.

Q. When was the first time you found out that that stake wasn't there?

A. I think that one within the last twelve months.

(Continuing:) When I saw the stake in 1899 the writing upon the stake was perfectly legible.

Q. Did you know anything about any other claim than the East [165] Fork Moonlight and No. 1 Bench at the time you were out there in 1899?

A. I did not.

(Continuing:) I was next on the ground after that on July 7th, 1899. On that day I went up to the point N. My purpose in going there was to cross over that bald knoll.

Q. What was your intention in examining that stake at the point N?

A. I wanted to see what that stake was that I had seen up on the hillside with Rutter.

(Continuing:) We had sighted from that stake but we didn't know what stake it was. I only knew it from what Rutter told me. I was not interested in the claim at all, I just wanted to make sure that that was the stake that Rutter had told me about. I wanted to see if he was right. My partner was with me on the 7th of July and he also examined the stake.

(Testimony of Thomas Lyle.)

Q. Any other stake in that vicinity at that time?

A. Yes, those two up at the NE. Corner, two willow stakes. There were two willow stakes standing there, they were small willow stakes.

Q. What was the other one scribed?

A. NW. Corner not stating any other name on it.

Q. Now, since that time have you owned any property in that vicinity?

A. Only away up on Anvil there, left limit of Anvil.

(Continuing:) I have not paid any attention to those claims since, nothing particular only on that No. 2 East Fork Moonlight. Rutter is dead for the past eight years. The man that was with me on July 7th, is captain of a boat at the present time running between Seattle and Vancouver; his name is Tom [166] Duffy. I can't tell you how many times I have been over the claim since 1899, but it is several times. I have been interested up there on Anvil creek ever since 1901 or 1902; have visited it every year since then.

Q. Where are you mining now?

A. Nowhere at present.

Q. How long since you have been engaged in actual mining?

A. Well, actual mining ever since I have been here.

Q. I have already asked you the question, but I wish you would give me the exact writings that were on the stake at V?

A. "SE. Corner Bench No. 1 Moonlight."

Q. Now, the exact writing on the stake at point N?

(Testimony of Thomas Lyle.)

A. "NE. Corner Bench No. 1 Moonlight." [167]

Mr. COCHRAN.—We now offer in evidence the deposition of C. J. Jorgensen, as follows:

Deposition of C. J. Jorgensen.

Direct Examination.

My name is C. J. Jorgensen. Age 55; residence, Nob Hill Avenue, Seattle, Washington. My occupation is master mariner. I am acquainted with the Jensen Claim, the Carlson Claim and the DePue Claim. The Jensen claim is the same as the No. 1 Bench Moonlight. The Carlson claim was located by Mrs. Carlson. I do not know the other locators, only Jensen, which was on the notice, and DePue. I am not personally acquainted with them. No. 1 Moonlight was located by Jensen; the Carlson claim by Mrs. Carlson and the Depew claim by Depew. The Carlson claim was located in 1899, in the spring; I don't know the exact date; the others, I don't know when they were located, I suppose the records show that. They were located by corner stakes, one stake at each corner, when I first saw them, but the Carlson claim besides the stakes, had a hole dug down probably a foot deep and two feet across, and a stake alongside of the hole at the northwest corner. That would be at the northeast corner of the No. 1 Moonlight. The others the corners were marked with willow stakes. The stake at this first corner was a willow stake at the time I first saw it. Afterwards I put in other corners myself on the Carlson claim; I put them in the further corners where the willow

(Deposition of C. J. Jorgensen.)

stakes were, and also left the willow stake in. I put 3x3 sawed timber in on each corner. The claims lay parallel with one another on No. 1 Moonlight Carlson and DePue adjoining one another on both ends, parallel lengthwise. No. 1 Bench Moonlight and [168] the DePue had the Carlson between. I have been up on the Carlson claim probably three or four times every year since 1899, sometimes more. Several times I have done assessment work and was along with my men, done the assessment work on the Carlson claim and so was very well acquainted with it, and knew the stakes and the lay of the ground. What I am testifying I know of my own knowledge.

Cross-examination.

I was first on the No. 1 Moonlight claim in the month of July, 1899. In that vicinity I knew the Carlson claim, No. 1 Moonlight and the DePue claim. I examined all three of the above mentioned claims. They were marked with willow stakes except the northwest boundary between the Carlson claim and the northeast boundary on No. 1 Moonlight where the hole was dug and the dirt thrown up a little making a mound where the stakes were placed. I know the Jensen claim or No. 1 Bench on Moonlight. I examined all the corner stakes at that time in July, 1899. The corners as I have already described, each had a willow stake. I was about to buy a quarter interest in the Carlson claim at that time, so I had a reason to look up the adjoining claims and see if they lapped over or came in contact with the Carlson claim. I am not acquainted with the stakes of the

(Deposition of C. J. Jorgensen.)

Bob Lyng or Moonlight claim, I know the ground but not the corner stakes of that claim. My knowledge of the claims in that vicinity was not confined solely to the Carlson claim, I made an examination of the adjoining claims in that vicinity. I did not have any interest in any other placer claim in that vicinity other than an interest in the Carlson claim. [169]

The only map I have received or that has been exhibited to me before testifying in this deposition was the one I am referring to in the deposition, which Mr. Roberts produced before me at this time. I saw it a few minutes before coming to the Commissioner's office. The map was then in the possession of Mr. Roberts, of Roberts, Battle, Hurlburt & Tennant, lawyers.

I have received no letters from the Pioneer Company or anyone on its behalf. I have not talked to anyone before testifying to-day, except Mr. Roberts a few minutes to-day, just before coming to the Commissioner's office to testify. Mr. Roberts is of the law firm of Roberts, Battle, Hurlburt & Tennant. Mr. Roberts at that time showed me the map in question, which has been referred to in my direct examination, and asked me to examine it and see if I recognized the location of the claims from the map. That is all the talk I had about the matter. [170]

Mr. COCHRAN.—We now offer in evidence the deposition of Elizabeth Jorgensen, taken in the same manner, before the same commissioner as the deposition of C. J. Jorgensen.

Deposition of Elizabeth Jorgensen.**Direct Examination.**

My name is Mrs. Elizabeth Jorgensen, formerly Mrs. Elizabeth Carlson. I am now the wife of C. J. Jorgensen and reside at 2311 Nob Hill Avenue, Seattle. I am acquainted with the Carlson claim, DePue claim and Bench No. 1 Moonlight claim—which was the Jensen claim at that time. The Jensen claim was located by Andrew Jensen sometime in the early spring of 1899; the Carlson claim was located by John Nelson in December, 1898; the DePue claim was also located in the early spring of 1899 by DePue. The Nelson claim was first staked by myself and a couple of others for John Nelson about the 20th of December, 1898, and as Nelson did not record the claim I relocated it for myself in April, 1899. When the Nelson claim was staked it was marked by willow stakes at the four corners, and afterwards, when I located it, I put new willow stakes, and used the old stakes too, and on the northwest corner I dug a hole and threw up a little hill of dirt and put a willow stake in there, and I left the old stake standing too. The other claims, the Jensen and DePue, were marked with willow stakes. I dug the hole myself. I have been on the claims every year a couple of times, except the last three years. My knowledge is derived from personal observation on the ground. I do not know anything about the Grant claim. The Carlson claim was between the Jensen claim, the No. 1 Bench Moonlight claim and the DePue claim, and joining them and

(Deposition of Elizabeth Jorgensen.)

lying parallel with them lengthwise. The long side is north and south. [171]

Cross-examination.

I first got acquainted with the vicinity of the Carlson claim in December, 1898. The Carlson claim was first staked as the Nelson Bench in December, 1898, by me and Frank Van Leuven and Jack Dalton. I never knew about the Grant claim. I sold out last interest this summer, the last interest I had in the Carlson claim. Schofield bought half and T. A. Davies got the other half. In 1899 I was acquainted with placer claim No. 1 Bench Moonlight. I do not know the Bob Lyng claim at all; all I can say is that the Jensen claim joined the Carlson claim and the west side of the Carlson claim joins the east side of the Jensen claim the whole length and runs parallel. I was not acquainted with the stakes and boundaries of the Bob Lyng claim in 1899. I never knew the Grant claim. I never saw any stakes on that claim. I never saw any of the Grant stakes. I saw this map to-day in the Commissioner's office and I saw it down in the Alaska Building in the office of Mr. Roberts before coming to the Commissioner's office to testify. Mr. Roberts is of the law firm of Roberts, Battle, Hulburt & Tennant. I never had seen this map before that time. I have not received any letters from anyone pertaining to the suit. I only spoke a few words to Mr. Roberts just before coming up here to the Commissioner's office.

Mr. COCHRAN.—I now offer in evidence copy of the location notice of the Carlson claim testified to

by Mrs. Elizabeth Jorgensen and C. J. Jorgensen, defining the location of the Carlson claim.

The COURT.—It may be received in evidence and [172] marked Plaintiff's Exhibit "K," and is as follows:

[Plaintiff's Exhibit "K."]

"NOTICE OF LOCATION.

NOTICE IS HEREBY GIVEN that the undersigned having complied with Chap. 6, Title 32 of the Revised Statutes of the U. S. and the local customs laws and regulations has this day located on Anvil Creek as a bench claim described as follows:

Commencing where notice is posted it runs 1320 ft northerly thence 660 ft westerly thence 1320 ft southerly and from there 660 ft easterly.

Claim is situated between the bench claim of A. Jensen and DePue Cape Nome Mining District Alaska.

Located Apr. 14, 1899.

ELIZABETH CARLSEN.

Witnesses:

JOHN J. DALTON.

FRANK VON LENNAN.

Filed for record 6 P. M. May 2, '99.

A. E. SOUTHWARD,

Depty.

(Recorded Vol. 10, page 44.)" [173]

Mr. COCHRAN.—I also offer a certified copy of location notice of the same ground located by C. J. Jorgensen, September 22, 1899, testified to by him in his deposition.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "L," said exhibit being as follows:

**[Plaintiff's Exhibit "L."]
"NOTICE OF LOCATION.**

Notice is hereby given that the undersigned having complied with Chap. 6, title 32 of the Rev. Statutes of the U. S. and the local customs, laws and regulations has this day located 20 acres of Placer Mining Ground on Anvil Mountain above Moonlight Creek—

Commencing where notice is posted claim runs 1320 ft in a southerly direction, thence 660 ft in a westerly course, thence 1320 feet northerly and from there 660 ft easterly.

Claim is between the bench claims of A. Jensen and De Pui. Cape Nome Mining District.

Located Sept. 22, 1899.

By C. J. JORGENSEN.

Witness:

JOHN J. DALTON.

Filed for record 2:15 P. M. Oct. 6—99

A. E. SOUTHWARD,
Deputy.

(Recorded Vol. 23, page 135.)"

Mr. COCHRAN.—Plaintiff rests. [174]

Defendants' Case.

Testimony of John Sundback, for Defendants.

JOHN SUNDBACK, a witness on behalf of defendants, being duly sworn testified as follows:

My name is John Sundback. I am clerk of the

(Testimony of John Sundback.)

district court at Nome, and ex-officio register of the local land office.

Q. I hand you an instrument, will you please state to the Court what it is, if you know?

A. Plat No. 608 of a claim of Jafet Lindeberg's, known as the Moonlight Bench, off Moonlight Creek.

(Witness continuing:) The number of the mineral survey is 608 and the survey is by Edward Franklin Lewis.

Q. Is that the official record from the files of the land office in your custody? A. Yes, sir.

Mr. GILMORE.—I offer that as an exhibit for identification at this time, if the Court please, and ask to have it marked for identification.

The COURT.—Let it be marked Defendant's Exhibit 10 for Identification. [175]

Testimony of Daniel A. Jones, for Defendants.

DANIEL A. JONES, a witness on behalf of defendants, being duly sworn, testified as follows:

My name is Daniel A. Jones. I am a civil engineer and U. S. Deputy Mineral Surveyor. I attended and studied at the University at Lexington, Virginia, and I have been engaged in civil engineering and surveying since 1895, and in Nome and vicinity for the last eight years. I have been a U. S. Deputy Mineral Surveyor for about a year.

Q. Mr. Jones, please refer to the map on the wall, next to Mr. Schofield there, and state whether or not you know what that map is?

A. I made the map. (Continuing:) It was made from my surveys by me on the ground. It correctly

(Testimony of Daniel A. Jones.)

represents the various claims and objects there as shown on the map from actual surveys.

Mr. GILMORE.—We offer the map in evidence if the Court please, as Defendants' Exhibit 11.

Mr. COCHRAN.—We would like to cross-examine him.

The COURT.—You may.

Cross-examination.

(By Mr. SCHOFIELD.)

Q. When did you make this map, Mr. Jones?

A. I made the surveys on the 2d, 3d, and 5th of November, this year, with the exceptions of points 10 and 11; the point 10 I surveyed in 1909 and the point 11 in 1908. (Continuing:) At the time I surveyed the Grant claim in November of this year Nick Barge, Frank Andrich and Howard Shea and Mr. Gilmore were with me on the ground. In [176] November of this year I surveyed at points 1, 2, 3, 4 and 5. I surveyed the points 8 and 9 also in November. I have my note-book of the survey, describing the stakes.

Q. What did you find at point 4?

Mr. GILMORE.—If the Court please, I do not wish this cross-examination to shut me out of going into this matter on direct, as I wish to have the right to examine him further.

The COURT.—You may.

A. 2x4x36 painted in black. (Witness continuing:) The figure 4 is painted in black on the stake. Also a 2x3x24 penciled Initial Stake No. 1 Ancient River Claim, located Nov. 2, 1911, Frank A. Aldrich,

(Testimony of Daniel A. Jones.)

locator, Howard Shade witness. Old sod mound, 6 inches square, one foot high; old willow stake two inches in circumference and about 18 inches high. I do not recall that I ever saw any of those stakes prior to the time of making this survey in November, 1911.

Q. What stakes did you find at point 5?

A. 4x4x24, scribed 1-436 M.C.; 2x3x24, painted in black figure 5; 2x3x36, no markings on it; two 2x4x24, nailed together, scribed 1-436 Corner No. 1 S. 608; 2x4x18, no markings; 2x4x36, northeast corner Bench No. 6, S. E. Bench No. 5; 2x4x18, penciled northwest corner, What's Left Fraction, located June 18, 1911, M. D. McCumber; old willow two inches in diameter, no markings; old willow one inch diameter, no marks, an old sod mound 3 feet in diameter, about 2 feet high.

Q. What stake did you find at point 1?

A. 4x4x12, scribed Corner S., other marks not discernible; 4x4x24, scribed 2-436; 2x4, with no marks; 1x2x18 no [177] marks; 2x2x18, no markings; 3x6x24, penciled initial stake What's Left Fraction, other penciled markings not discernible. Location notice attached to What's Left Fraction. There are two sod mounds at that point, about 3 feet apart, one of them 2½ feet in diameter and 2 feet high, and the other one 2½ inches in diameter, 3 inches high.

Q. And what stake did you find at point 2?

A. That is a driftwood stake, 4½ inches in diameter, scribed Corner 5; 2x4x24, letter 2 painted in

(Testimony of Daniel A. Jones.)

black. Old sod mound $2\frac{1}{2}$ inches square, 2 feet high.

Q. What does the point 6 represent?

A. A stake 4x4x24 scribed 3-436; 2x4x18, tack on top; 2x4 2 18, tack in top, no marks; 2x4x18, no marks.

Q. What did you find at the point 9 in November, 1911?

A. Stake 2x4x24, scribed stake No. 3, M.B.; 2—2x4'sx18, nailed together, scribed Corner 2 S. 608, and Corner No. 4; stake is broken off, no marks; old driftwood $1\frac{1}{2}$ in. diameter, scribed F. M. C. SW. Corner; that stake is rotted off on the top, and one letter that I couldn't make out; there is a small rock mound. Six feet north of that stake there was a 2x3x30, no markings.

Q. Did you notice any other markings on the ground marking that corner, indicated by the figure 9 on the map?

A. An old hole near this stake, that was 6 feet north of that point. (Witness continuing:) I first surveyed at the point 9 on September 15, 1909.

Q. How did you come to know point 9? [178]

A. Well, it was pointed out to me the last time I was out there as being the corner of the Moonlight claim, and I recognized the stake at that point as being a corner of the Carlson location at the time I surveyed the Carlson location.

Q. Now, when did you first see point 10?

A. That was in 1909. (Continuing:) That was while I was surveying the Carlson claim.

(Testimony of Daniel A. Jones.)

Q. What did you find at point 10, what stakes, in November, 1911?

A. 4x4x18, scribed Corner 3, S. 608, then a 2x4x18, scribed stake No. 2 M.B., that is all.

Q. When did you survey point 11?

A. Why, in 1908, I don't remember the time; I haven't those notes, and don't remember exactly the time in 1908.

(Continuing:) I was picking up the lines of the Bob Lyng claim and No. 6 Good Luck, and making a survey of the Moonlight Springs. I established point 7 by my survey of November of this year; I also remembered that point from the time I was out there before.

Q. What stakes have you, Mr. Jones, at the point 8?

A. That is a 2x4x36, scribed stake No. 4, M.B.

Q. What does M. B. stand for?

A. Moonlight Bench, I presume.

Q. Any other stakes at that point?

A. That is all. (Witness continuing:) I have no personal knowledge of the true position of the stakes at 2, 3, 4 and 5, with reference to their original settings. I surveyed on the ground at the points that were indicated to me as the stakes of the Grant claim, and tied in the railroad track on that map where it crosses the northerly and southerly boundary lines. [179]

Q. What is the distance between point 5 crossing to the track? A. 165 feet.

Q. What is this dark line crossing the westerly

(Testimony of Daniel A. Jones.)

boundary line between points 1 and 2 represent?

A. That represents the springs. (Continuing:) That was tied in by me; it is 118 feet south of point 1; it crosses the line at point 2, 118 feet south of point 1; I tied in the Moonlight Springs on this survey from point 5. I tied it in from point 5 to the intake of the pipe-line. It is represented on the map by a small circle. It is 300 feet from point 5 to the intake. I made a mistake in the schedule on there; it should be nearer to 5. I didn't take notes of the wire fence at that time; I picked up the intake of the pipe-lines and then I have drawn the rest on it for the purpose of illustration. It doesn't pretend to show the extent of the springs along that ground there in that vicinity. I may have read the wrong point, the way these descriptions are made in this book is not the same as on that map.

Q. What survey were you making when you surveyed at point 10?

A. I was supposed to be making a survey of the Carlson Bench. (Continuing:) Notes of the survey in the book are not made the same as on the map; I may have read the wrong point. I see here it is 2x3 southeast corner of Carlson claim.

Mr. SCHOFIELD.—I refer to point 10 on the map that has been offered?

A. That is a corner of Survey 608; that is all at point 10. (Witness continuing:) Mr. Sommers and myself made this survey together. Mr. Lehmann was with us; it seems to me there was [180] somebody else there but I can't remember who it was.

(Testimony of Daniel A. Jones.)

The notes in my survey-book are some in my handwriting and some in Sommer's. We took the notes together. Mr. Sommers is out of the District of Alaska this winter. When we went around to a bunch of stakes to take a description, one would read them off and one would write them down.

Q. Now, examine your note-book and see whether or not you didn't find at point 10, a stake marking the southwest corner of the Carlson claim, to wit, a board nailed on a post and marked E. C. SW. corner?

A. Yes, that is written up on top of the page here.

Q. Now, just give that marking?

A. 2x4x18, a 1x6x2½ tacked to it.

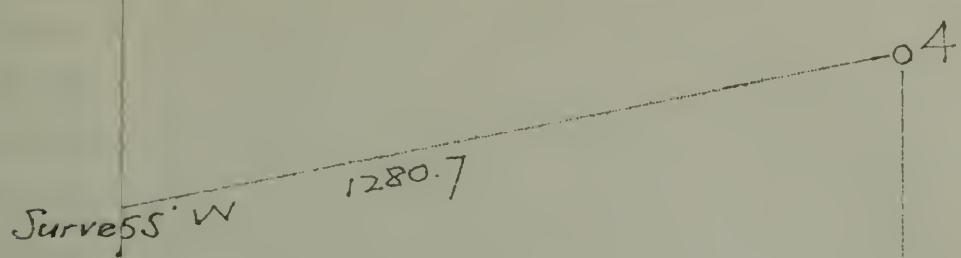
Q. How was it marked?

A. E. C. SW. corner Elizabeth Carlson claim.

Q. Any other notice at that time?

A. That is all.

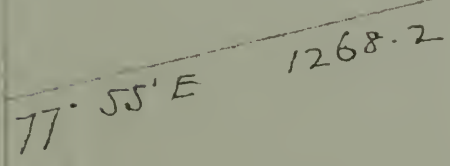
The COURT.—The map may be received in evidence marked Defendants' Exhibit 11, said exhibit being as follows: [181]



N^o 1

og
Claim

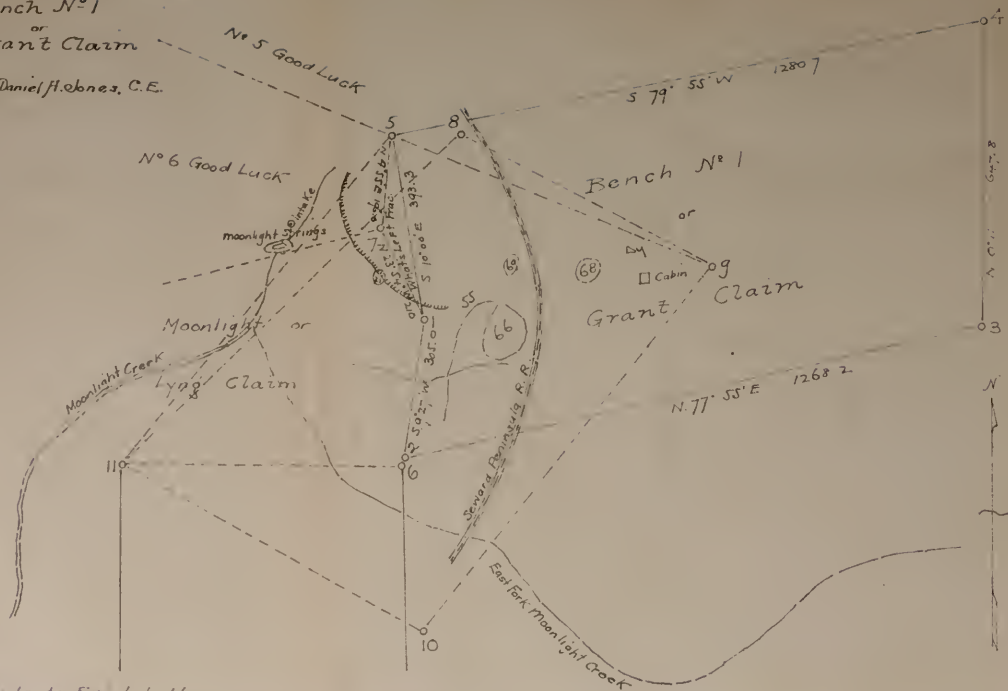
647.8
N 0° 11'



Map
of
Bench N^o 1
or
Grant Claim

Surveyed by Daniel H. Jones, C.E.

400



(Testimony of Daniel A. Jones.)

Direct Examination Resumed by Mr. GILMORE.

Q. Now, Mr. Jones, at the time you made the survey of the Grant claim and the other portions of that map, on the 2d day of November, 1911, and the succeeding days that you mentioned, state to the Court whether or not you had a blue-print along with you, made by Arthur Gibson, showing the lines of Bench No. 1?

Mr. COCHRAN.—Objected to as being irrelevant and immaterial.

Mr. GILMORE.—I don't want the record to stand unchallenged [183] that I was the one that indicated those lines and objects for him to survey on the ground. I would like to have it show in the record that at the time he made the survey he drew the points 8 and 9 from a blue-print made by Arthur Gibson, that he had with him on the ground at the time of the survey.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now ask leave of the Court at this time, to place up on the wall Defendants' Exhibit 9, which is already in evidence.

The COURT.—You may do so.

Q. Now, Mr. Jones, will you please take your notebook and refer to point one on Defendants' Exhibit 11, the big map, the one just offered in evidence, and give me all of the stake readings, and the date you made the survey at that point?

A. I surveyed there on the second of November,

(Testimony of Daniel A. Jones.)

of this year. (Witness continuing:) I found stake 4x4x12, scribed Corner S, other markings not discernible; 4x4x24, scribed 2-436.

Q. What does that mean?

A. That means stake No. 2 Survey No. 436, Mineral Survey. (Witness continuing:) I also found two 2x4's, no marks on them; they were pine stakes, each the same size; I also found 1x2x18, no marks; a 2x2x18, no marks; a 3x6x24, penciled initial stake What's Left Fraction; other pencil marks not discernible. Location notice attached to the What's Left Fraction; [184] two sod mounds 2½ feet in diameter, two feet high.

Q. State to the Court the character of the mounds that were there.

A. They were old sod mounds. (Continuing:) I made a careful observation of those two mounds. They were two distinct mounds, three feet apart. I have given you all the markings in both of the mounds that I found there in November of this year.

Q. Now, Mr. Jones, state whether or not there is any embankment or plateau in that immediate vicinity. A. There is.

Q. In what direction from that stake?

A. It commences at a point about thirty feet north of the line 1-5, about thirty feet north of the point 1.

O. On this map, Defendants' Exhibit 11, what is the embankment represented by?

A. Represented by that shaded line.

Q. I will mark that line "21" with a circle around it, where does that embankment cross the line 1-5 from point 1?

(Testimony of Daniel A. Jones.)

A. At a point about thirty feet north of point 1. (Continuing:) I think the bank at that point is abrupt, it rises about eight or ten feet. Right at that point it is gradual, ten feet west of it it is rather abrupt and continues that way up.

Q. With reference to the ground between points 1 and 2, state whether or not there is any embankment at all there.

A. No, all flat, practically flat, general slope to the south.

Q. Notice this map over here, Plaintiff's Exhibit "A," where it says "steep bank" extending across between points S and U, do you notice that?

A. Yes, sir.

Q. Is there such a steep bank running through between S and U? [185] A. No, sir.

Q. State whether or not there is an embankment as shown on that map.

A. No. (Continuing:) It is 305 feet from point one to the point 2, the course is S. 9° 51' E. The courses are true north.

Q. Now, referring to point 2, how many mounds on the ground in that vicinity were there, at point 2 on the map?

A. There were two different bunches of stakes six feet apart.

Q. The one that you have indicated as point 2 being northerly of that point; will you please read all the stakes you found at that point?

A. Driftwood stake 4½ inches in diameter, scribed Corner 5, and a 2x4.

(Testimony of Daniel A. Jones.)

Q. Name of what claim?

A. No name. A 2x4x24, the letter 2 painted in black.

Q. What kind of paint?

A. I don't know, black paint.

Q. So as to inform the Court, what was the size of the figure painted in black?

A. I should judge three inches, to the best of my recollection. (Witness continues:) You could see the figure when quite a distance away from the stake.

Q. What was the character of the mound?

A. Old sod.

Q. Now, at point 6, being the southerly mound at that point?

A. A 4x4x24, scribed 3-436. (Continuing:) That means corner No. 3, Mineral Survey 436; 2x4x18 tack in top of it, no markings; 2x4x18, no markings.

Q. Now, Mr. Jones, explain to the Court the discrepancy between [186] the distances on Exhibits 9 and 11 between the points 1 and 2.

A. The distance I show 305 feet runs from point 1 to 2, and the distance shown in the blue-print runs from point 1 to point 6.

Q. This line in here Mr. Jones, I believe you stated to Mr. Schofield, represented a stream of water, please explain where that stream comes from and what it is?

A. Well, it is a spring, coming out of the ground. (Continuing:) I don't know whether it comes out of a pipe. The character of the ground where the water comes out has been disturbed by mining work,

(Testimony of Daniel A. Jones.)

there has been a cut, it looks like a cut, where the stream of water is; there are tailings there to indicate that work has been done at that point.

Q. Can you give the Court a fair idea of the amount of work you observed done around in the immediate vicinity of where you say the spring was?

A. From the points 6 to the point 1 and then east from the point one to the railroad track, and the railroad down to the intersection of the south line to point 6, in that piece of ground I should think there is in the neighborhood of twenty-five or thirty shafts or cuts. They were old shafts, some of them. They were two of them timbered shafts.

Q. Where were the timbered shafts that you speak of?

A. Embraced within that piece of ground. The portion I have described is approximately 300 feet square, on the southwesterly portion of the Grant claim, as I surveyed it. The general character of the surface of the Grant claim at that point, is a general slope at the southwest, and when you cross the railroad [187] track there is quite a decided rise, it might be called a plateau. The high ground, or mountainous ground of the Grant claim is in the northerly part. The general slope is from the northeast to the southwest. The general slope would be from point 4 to the point 6, as indicated on Exhibit 11. The highest ground of the Grant claim is at point 4. It is a great deal higher at the point 4 than at point 3.

Q. Read the stakes, all the stakes that you found

(Testimony of Daniel A. Jones.)

at point 3, Defendants' Exhibit 11?

A. 2x4x24, with the figure 3 painted in black; a stake 2x3x18 no marks.

Q. How did the stake with the figure 3 painted in black, compare with the stake with the figure 2 on it, at the point 2?

A. Same kind of a stake. Same character of painted figure. (Witness continuing:) The stake was placed so it was plainly visible. At the point 3 I also found a 2x4x20 with a 1x8 board attached, no markings; a 2x3x18 penciled stake, No. 4 Ancient River claim, located November 2, 1911, Frank A. Andrich locator, Howard Shade witness; then in that mound there was a willow growing, dead now, but had been a willow growing, no marks discernible.

Q. What was the character of the mound at the point 3?

A. An old sod mound, 21½ feet square by two feet high.

Q. State how that mound compares in size and shape with the mound at point 2.

A. Same character of mound. (Continuing:) It was the same character of mound as I found at point 1.

Q. From your examination of the mound at point 3, are you able to state whether or not it was an old mound, or a more recent one? [188]

A. An old mound. (Continuing:) The point 4 was on the slope of the mountain, on high ground.

Q. What did you find at point 4 when you made the survey?

(Testimony of Daniel A. Jones.)

A. 2x4x36, with figure 4 painted in black; 2x3x24 penciled initial stake No. 1 Ancient River claim, located November 2, 1911, Frank A. Aldrich locator, Howard Shade witness.

Q. Was there a willow stake at that point?

A. An old willow stake about two inches in circumference and 18 inches high.

Q. Where was that willow stake with reference to the particular stake that you describe?

A. In the mound alongside of the other stakes; there was an old sod mound three feet square, one foot high; that mound had been torn down by ground squirrels.

(Witness continuing:) That mound and the stakes in it were plainly visible. The general slope from 4 to 5 was downward.

Q. What stakes, if any, did you find at point 5, at the time you surveyed in November, 1911?

A. 4x4x24 scribed 1-436 M. C. and a 2x3x24, figure 5 painted in black and 2x3x36, no marks; two 4x4'sx24 nailed together, scribed 1-436 and Corner No. 1 S. 608.

Q. What does that mean?

A. That means Corner No. 1 of Mineral Survey No. 608.

Q. What kind of a stake did you find there on the 2d day of November of this year?

A. Two stakes 4x4's nailed together.

Q. That is the one that was scribed 608?

A. Yes, sir. [189]

Q. What other stakes at the point 5?

(Testimony of Daniel A. Jones.)

A. A 2x4x18 no marks; a 2x4x36, scribed NE. Corner, Bench No. 6 and SE. Bench No. 5; and 2x4x18 penciled NE. Corner What's Left Fraction, located June 18th, 1911, M. D. McCumber. An old willow two feet in diameter and another old willow one inch in diameter, no marks; that is all of those stakes; all of those stakes were set in an old mound 21½ feet in diameter by two feet high.

Q. How did the mound at point 5 compare with the mounds at the points 1, 2, 3, and 4 with reference to looks, age and size?

A. They were practically all the same kind of mounds.

Q. Had you surveyed the point 9 prior to the 2d day of November of this year? A. I had.

Q. And for whom did you survey prior to that time at that point?

A. I surveyed for Mr. Schofield. (Continuing:) I surveyed out there September 15, October 15th and the 27th, three days in the fall of 1909. I surveyed the Carlson claim for Mr. Schofield; that was the time that Mr. Sommers and Mr. Lehman were there with me.

Q. Who, if anyone, pointed out point 9 on the ground as being the corner of the Carlson claim?

A. Mr. Lehman did, to the best of my recollection. (Continuing:) I do not know whether Mr. Stevenson was present or not, he might have been. When I was out there on the 2d day of November this year the stakes I found there were the same at point 9 that I found in 1909, when I surveyed for Mr. Schofield.

(Testimony of Daniel A. Jones.)

Q. And those are the two stakes that you described in your examination by Mr. Schofield?

A. Yes, I read them, I think.

Q. You also at the time Mr. Schofield was asking you about point 9, told him you found a stake marked P. M. with the first letter obliterated?

A. It was also marked SW.

Q. Did you ever in any of your surveys in that vicinity, find any other stakes similarly marked?

A. I did.

Q. And what was the letter on the other stake, the letter that you say was obliterated on this one?

A. The letter E. (Continuing:) The four initials read E. P. M. C. I heard Mr. Gibson refer to this claim E. P. M. C. Excelsior Placer Mining Claim; they were driftwood stakes about two inches square, all scribed E. P. M. C.

Q. And what stake or stakes did you find at point 8? A. 2x4x36, scribed S. No. 4, M. B.

Q. Were there any other stakes in that vicinity at that time, or at that place?

A. That was the only stake that I saw.

Q. State whether or not there was any mound at point 8, or anything to indicate a mound.

A. No, sir.

Q. How did you find the point 8 on the ground?

A. I had a blue-print that was made by Mr. Gibson and I set up the instrument at point 9 and ran out the courses and distances on that blue-print, located the point 8 and retraced the line 8-9.

Q. What is the distance, approximately, if you

(Testimony of Daniel A. Jones.)

don't know [191] exactly, between points 5 and 8, being the distance between the stake you found marked Moonlight Bench at 8, and the Mineral Survey stake 608 at point 8? A. 141.3 feet.

Q. State whether or not the Moonlight stake at point 8 and the mineral survey stake at point 5, were both at their respective points on the ground at the time you surveyed.

A. They were. (Continuing:) I surveyed to the point 7 on the map in November. I had been at that point in 1908. To the best of my recollection I tied in that point when I surveyed the Moonlight Springs in 1908; I know the placer claim known as the Moonlight or Bob Lyng claim, and know the easterly end stake or monuments of the Bob Lyng claim. They are at the points 2, 1 and 7 on my map. To the best of my recollection those points were pointed out to me as the east end stakes of the Bob Lyng claim.

Q. Who, if anyone, pointed out point 7 to you as being a corner of the Bob Lyng claim, or the Moonlight claim, and when?

A. Charlie Johnson in 1908.

Q. Who was Charlie Johnson and what position did he occupy?

A. Superintendent of the Pioneer Mining Company at that time. I think that was his official position. (Continuing:) The point 7 was marked at that time.

Q. What is the distance of the intake of the Moonlight Water Company from the Grant claim as shown on the map?

(Testimony of Daniel A. Jones.)

A. 300 feet from point 5. I think I made a mistake on the map, I have it 60 feet too far to the south, that is, the intake of the pipe. It should be where I write the word "intake" on the map. [192]

Q. Just refer to Plaintiffs' Exhibit "A," I will ask you to state whether or not there is any reservoir or dam on the ground at that point at the present time. A. No, sir.

Q. Is there any reservoir or dam in that vicinity at the present time?

A. No, sir. (Continuing:) The ground has been mined and worked out at that point by elevators.

Q. Is that a correct representation of the Lyng claim, the lower half of the Moonlight, as it now is on the ground?

A. I think it is, except there is no reservoir or dam there at the present time. (Continuing:) I surveyed the Springs in 1908 for Ira D. Orton who represented the Moonlight Water Company. That was prior to the survey I made for Mr. Schofield of the Carlson claim. I surveyed and tied in the point 10 on the map, at the time I surveyed the Carlson claim in 1909 for Schofield.

Q. You notice on Defendants' Exhibit 9, the blueprint, there is a point marked "M"? A. Yes, sir.

Q. State whether or not in November of this year you did tie in point "M" on the ground at the request of myself. A. I did.

Q. Will you please step to Mr. Gibson's map, Plaintiff's Exhibit "A" and show the Court where

(Testimony of Daniel A. Jones.)

that is, where you tied it in, as near as you can?

A. Near this point that is marked 14.

Q. And where was that point, what object, if any, was on the ground at that point, point 14, at that time?

A. None at all. (Continuing:) There was a ditch there the [193] point M would be in the bottom of the ditch. I measured from the point M to point J on the ground. It is approximately 120 feet. When I surveyed out there in September, 1909, for Mr. Schofield, I established the northeast corner of the Carlson claim at the point J.

Q. And how far, then, was that point west of the Carlson claim as shown on the blue-print?

A. That is approximately 120 feet.

Q. Where did you establish the southern end of the Carlson claim, as shown in Defendants' Exhibit 9?

A. What is shown there as the southwest corner on that blue-print, is now the southeast corner of the claim.

Q. What is the distance with reference to the width of the claim? A. About 600 feet.

Q. What is the distance on Mr. Gibson's map, from H to G? A. 608.1 feet.

Q. What is the distance on the blue-print lower end of the Carlson claim, as shown there?

A. 608.1 feet.

Q. This stake that Mr. Schofield asked you about at point V or point 10, which is supposed to correspond on the different maps, do you know when that

(Testimony of Daniel A. Jones.)

stake with the notice on top of it, board and notice on top of it, was placed there?

A. No, sir. (Continuing:) At the time I surveyed the Grant claim on the 2d of November, 1911, I found improvements on the claim. I found a cabin and numerous shafts and cuts. I found a cabin on the claim on the 2d of November, 1911; it is indicated on the map by the word "cabin." [194]

Q. Do you know the ground in controversy by reason of your surveys? A. Yes, sir.

Q. State to the Court whether or not the cabin is within the premises in controversy. A. It is.

Q. What is the character of the surface of the claim where the cabin is?

A. Right below the cabin, between the railroad track and the cabin, there is quite a decided break in the surface of the ground; it is high ground where the cabin is situated; the cabin can be seen from all parts of the Grant claim.

Q. Now, just tell the Court what kind of a cabin it is, as you recall it.

A. It is red, about 10x12 feet in size.

Q. State whether or not anyone was living in the cabin while you surveyed. A. There was.

Q. Who was it?

Mr. COCHRAN.—Objected to as immaterial.

Mr. GILMORE.—We are going to prove possession of the ground at the present time, also at the time and before the suit was started. I want to show by this witness that we had possession of the ground in controversy on the day he was there.

(Testimony of Daniel A. Jones.)

The COURT.—Objection overruled.

A. Captain Smith was living there. [195]

Q. State whether or not there was anybody working on the ground the day you were there.

A. There was. He worked between the cabin and the railroad track, a little north of the cabin.

Q. Where with reference to the ground in controversy?

A. Between the cabin and the railroad track, a little north of the cabin.

Q. State whether the work being done was within the ground in controversy. A. Yes, sir.

Q. Now, at the time you made the survey in November of this year, did you observe or tie in or make any surveys of any work done on or indicated on the surface of the Grant claim, or any portion of it?

A. Yes, I saw other work there, but I didn't tie it in.

Q. On what portions of the claim other than what you have already told the Court?

A. On the north part of the claim. I don't remember positively about the northwesterly corner. (Continuing:) The work consisted of shafts, holes and a little south of the cabin and across the railroad track, right at the foot of that terrace, there was an old shaft that from the amount of dirt and the heavy rocks outside around it, I should judge to have been 30 or 40 feet deep.

Q. Referring to the dotted lines on map, Exhibit 11, what does the dotted line represent, the line run-

(Testimony of Daniel A. Jones.)

ning from 11-10-9 and 5?

A. It represents Mineral Survey 608.

Q. And did you trace that on the map from the survey made by Mr. Lewis? **[196]**

A. I put it on the map and checked it by the survey made by Mr. Lewis and found it checked.

Q. And does it check with the official survey in the Land Office? A. It does.

Mr. GILMORE.—We now offer the original plat survey No. 608, identified by Captain Sundback, in evidence.

The COURT.—It may be received in evidence and marked Defendants' Exhibit No. 10, said exhibit being as follows: **[197]**

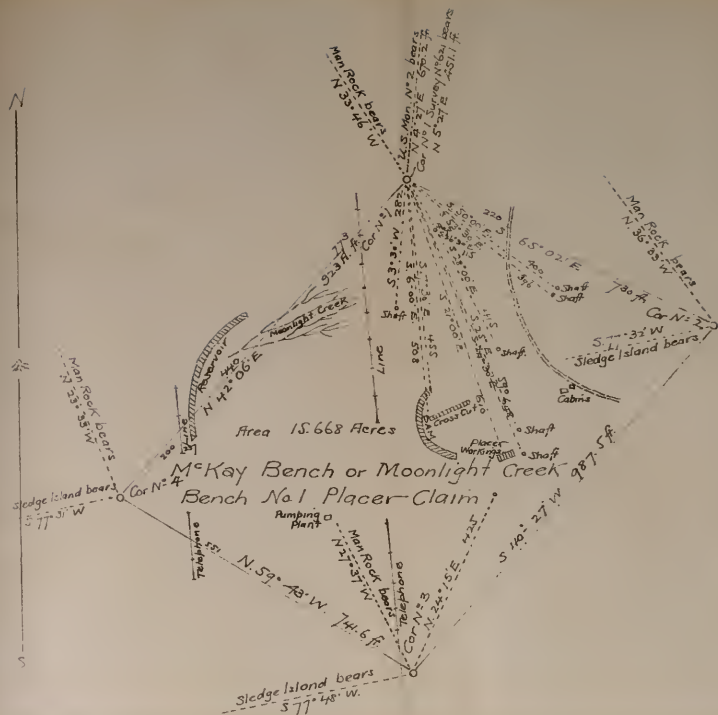
ated : January 3rd 1899
 d: January 17th 1899
 Survey No. 608
 ion for Survey : October 21st 1903
 Land District

PLAT
 of the claim of
 Jafet Lindeberg
 Known as the
 Kay Bench or Moonlight Creek Bench N^o 1
 Placer Claim
 in Cape Nome Mining District
 District of Alaska
 Containing an Area of 15.668 Acres
 Scale of 200 feet to the inch
 Variation 19° 32' E.
 Surveyed August 18, 1904 by
 Edw. Franklin Lewis
 U. S. Deputy Mineral Surveyor.

Field Notes of the Survey of the Mining Claim of
 Jafet Lindeberg

ch or Moonlight Creek Bench N^o 1 Placer Claim
 this plat has been made under my direction.
 examined and approved and are on file in this office.
 by certify that they furnish such an accurate description
 ing claim, as will, if incorporated into patent, serve
 tify the premises, and that such reference is made
 natural objects or permanent monuments as will
 e and fix the locus thereof.
 certify that Five Hundred Dollars worth of labor has
 ted or improvements made upon said Mining Claim by
 his grantors and that said improvements consist of
 ue \$ 1440.00, a cross cut Value \$ 150.00, placer
 value \$ 275.00 and a wing dam Value \$ 200.00, that the
 said improvements is correctly shown upon this plat,
 portion of said labor or improvements has been
 the estimate of expenditures upon any other claim
 ter certify that this is a correct plat of said Mining
 e in conformity with said original field notes of the
 re of and the same is hereby approved.

r General's Office } W^m L. Distin
 Alaska }
 1904 } U. S. Surveyor General for
 Alaska.



Claim located : January 3rd 1899
 Recorded : January 17th 1899
 Mineral Survey No 608
 Application for Survey : October 21st 1903
 Juneau Land District

PLAT
 of the claim of
 Jafet Lindeberg
 Known as the
 McKay Bench or Moonlight Creek Bench No. 1
 Placer Claim
 in Cape Nome Mining District
 District of Alaska
 Containing an Area of 15.668 Acres
 Scale of 200 feet to the inch
 Variation 19° 32' E.
 Surveyed August 18, 1904 by
 Edw. Franklin Lewis
 U. S. Deputy Mineral Surveyor.

The original Field Notes of the Survey of the Mining Claim of
 Jafet Lindeberg

Known as the :

McKay Bench or Moonlight Creek Bench No. 1 Placer Claim
 from which this plat has been made under my direction
 have been examined and approved and are on file in this office.
 and I hereby certify that they furnish such an accurate description
 of said mining claim, as will, if incorporated into patent, serve
 fully to identify the premises, and that such reference is made
 therein to natural objects or permanent monuments as will
 perpetuate and fix the Locu^s thereof.

I further certify that Five Hundred Dollars worth of labor has
 been expended or improvements made upon said Mining Claim by
 claimant or his grantors and that said improvements consist of
 9 shafts value \$1440.00, a cross cut value \$150.00, placer
 workings value \$275.00 and a wing dam value \$200.00, that the
 location of said improvements is correctly shown upon this plat,
 and that no portion of said labor or improvements has been
 included in the estimate of expenditures upon any other claim
 And I further certify that this is a correct plat of said Mining
 claim made in conformity with said original field notes of the
 survey thereof and the same is hereby approved.

U. S. Surveyor General's Office } W^m L. Distin
 Sitka, Alaska
 October 1, 1904 } U. S. Surveyor General for
 Alaska.

(Testimony of Daniel A. Jones.)

Mr. GILMORE Resumes Examination of Mr. Jones.

Q. Now, Mr. Jones, refer to the map which I have just placed on the wall, to which I direct your attention. State if you know, who made that map.

A. I did. (Continuing:) I made it in the month of November, 1911. The Bench claim No. 1, the Grant Claim, No. 2 East Fork, What's Left Fraction and the line of the Moonlight or Lyng claim, are all made from actual surveys by me, and those claims are correctly depicted on that map, with reference to each other. The other claims that are named on the map were made by me from a map sworn to by Arthur Gibson, those claims were drawn from Defendants' Exhibit 7; there is one other claim drawn in there with red ink called No. 1 Moonlight or Jensen's claim. The name is written in in blue; that was put in at Mr. Gilmore's request.

Q. With the exception of that one drawn on there, Bench No. 1 Moonlight, is there any other claim on there that was not surveyed by you, or taken from Gibson's map, Exhibit 7? A. No, sir.

Q. And do the various claims that are drawn on there aside from that particular one which I have referred to, represent the claims on the ground on this particular exhibit? A. Yes, sir.

Mr. GILMORE.—We offer the map in evidence.

Mr. COCHRAN.—We object to it on the ground that it is wholly immaterial and not sufficiently proven.

The COURT.—The objection to the offer of map in evidence is sustained, to which ruling of the

(Testimony of Daniel A. Jones.)

Court the defendants then and there excepted and the exception was allowed. [199]

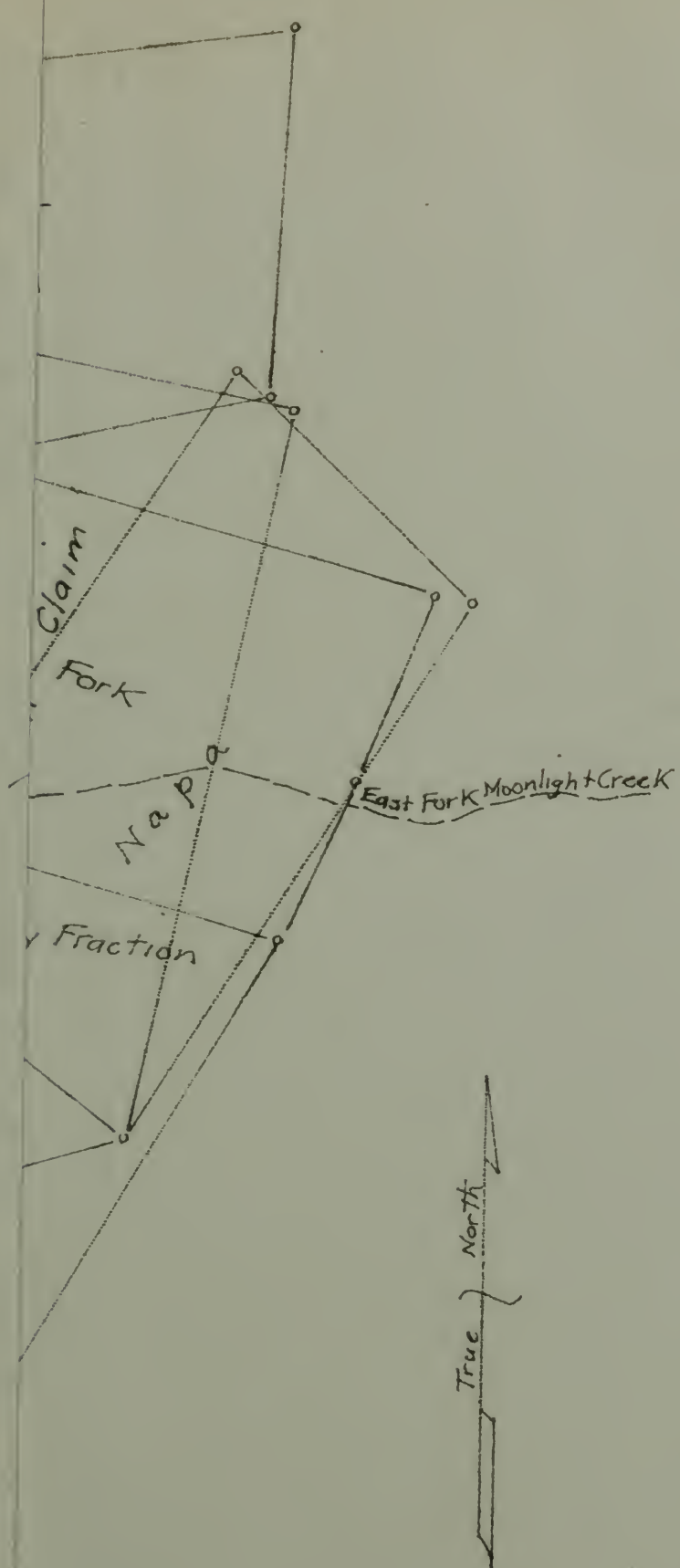
Mr. GILMORE.—I now offer the map in evidence for illustration.

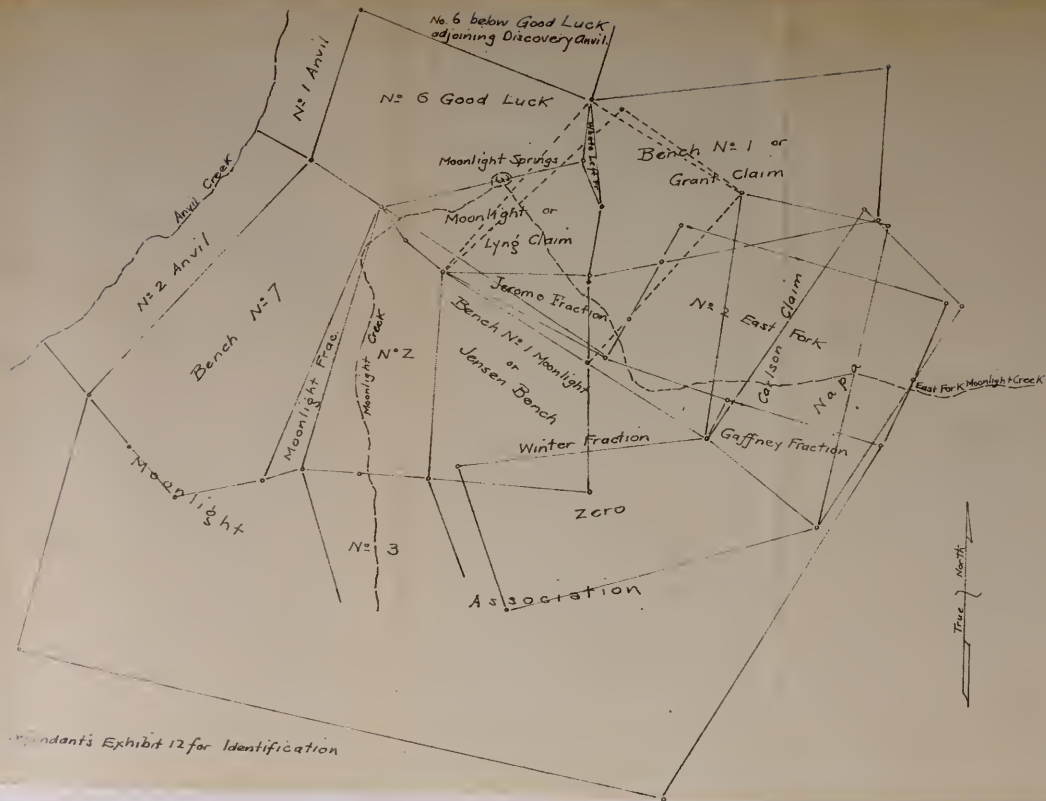
Mr. COCHRAN.—We object to it being offered in evidence for any purpose whatever.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the clerk mark it for identification.

The COURT.—It may be marked Defendants' Exhibit No. 12 for Identification. Said map being as follows: [200]





Platant's Exhibit 12 for Identification

(Testimony of Daniel A. Jones.)

Q. Now, Mr. Jones, do you know a claim known as No. 5 below Good Luck?

A. Yes, sir. (Continuing:) I first knew the claim in 1908; it was pointed out to me by Charlie Johnson; it lies north of No. 6 Good Luck and east of Discovery Claim Anvil, it lies between the Grant claim and Discovery Anvil, and joins both of these claims.

Cross-examination.

(By Mr. SCHOFIELD.)

I never surveyed No. 5 Good Luck; I don't know that the Smith Fraction lies between No. 5 and No. 6 Good Luck. The only stakes I examined in that vicinity at that time were those that were pointed out to me by Charlie Johnson. He was superintendent of the Pioneer Mining Company at that time. I observed quite a lot of workings easterly of the cabin on the Grant claim, southerly of the cabin and east of the railroad track. I could not state positively whether there were a number of shafts on the portion of the Grant claim, on the conflict area with the Carlson claim.

Q. Examine the blue-print I hand you and state whether or not that is the survey you referred to when you say you surveyed No. 2 East Fork Moonlight.

A. Yes, that is the one. (Continuing:) It is a correct plat of the survey made at that time by Mr. Sommers and myself, from the stakes upon the ground.

(Testimony of Daniel A. Jones.)

Mr. SCHOFIELD.—We offer it in evidence on cross-examination of this witness.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "M." Said exhibit being as follows: [202]

[Faint, illegible handwriting at the top of the page, possibly a title or header.]

[Large block of faint, illegible handwriting in the middle of the page, appearing to be a list or a series of notes.]

[Faint, illegible handwriting at the bottom of the page, possibly a signature or footer.]

MAP
showing
CARLSON CLAIM and N^o 2 EAST FORK MOONLIGHT
Nome, Alaska.

Surveyed: Sept 15, Oct. 15, and Oct. 27th 1909.

by Dan'l A. Jones & R. J. Sommers
Civil Engineers
Nome, Alaska.



(Testimony of Daniel A. Jones.)

(Witness continuing:) At the time I surveyed the Moonlight or Lyng claim, there was no dam at the point shown on Plaintiff's Exhibit "A," but by my testimony I did not mean to say that there never was a dam there at that point in the old days. At the time I surveyed the Moonlight the specific purpose I was sent out there for was to get the east line of Good Luck and Moonlight claims, and showing that dam with reference to those claims and the fence embracing the springs.

Q. Now, with reference to the stake that you found at point Q, you testified that you found one stake at that point on Plaintiff's Exhibit "A" marked M. B.?

A. Yes, sir. (Continuing:) That was the only stake in that immediate vicinity. It stands right up on top of the ditch bank and also the stake at point J, as a matter of fact, that stands up on top of the ditch on the lower side. There are two stakes at that point, one stake marking the northwest corner of the Napa or Depue claim and the northeast corner of the Carlson claim.

Q. Now, you say that there was a red cabin, Dan, that was situated here as delineated on Defendants' Exhibit 11?

A. Yes, sir. (Continuing:) I did not observe whether or not the cabin was on skids, never paid any particular attention to it at all, only surveyed over to it and to put it on the map.

Q. At the time you were out there didn't you testify that there were persons in possession of the

(Testimony of Daniel A. Jones.)

cabin? A. Yes, sir.

Q. And that there was work going on upon the ground? A. Yes, sir.

Q. What kind of work? A. Sinking a shaft.

Q. Where was that shaft being sunk at that time?
[204]

A. Between the railroad track north of the line drawn west from the cabin to the railroad track.

Q. About halfway between the cabin and the railroad track?

A. Yes, I presume so, nearer the railroad.

Q. Who was working there then?

A. I don't know who the party was, he was then down I should judge ten feet.

Q. Who called your attention to the fact that they were working there at that time, Mr. McCumber?

A. Mr. McCumber wasn't there. I saw a fellow working and I went over and looked into the hole.

Q. Did you tie any of this work in in your survey of this ground?

A. No, sir. (Continuing:) I saw considerable old work in the southwest portion of the Grant claim.

Q. You don't know who did that work?

A. Well, when I was out there in the spring of 1904 they were working on that claim. (Continuing:) At the point 9 on my map there was a small hole dug in the ground; there was a stake stood six feet north of that point and the hole was a little to the northeast of that stake. It was not a fresh hole, I should judge it to be an old hole. The first time I noticed it particularly was this month. I

(Testimony of Daniel A. Jones.)

might have noticed it when I surveyed the Carlson Bench but I do not recall having done so at this time. The stakes found at point 9 were a trifle south of the middle of the Grant claim. At that point it is what I would call a prominent point, but the ground right around there in that immediate vicinity, is rather flat. In places below that point there is a bench or plateau where there is a drop-off averaging from six to eight feet, in some places ten feet. I know that there is a bench or plateau there [205] and willows below it, but I do not recall the general direction of it. The stakes at point 9 stand in open ground above the break-off; the stakes from that point can be seen from below the railroad track. It cannot be seen from any point south of the railroad track; I think it can be seen from all points north and east of the railroad track.

Redirect Examination.

(By Mr. GILMORE.)

Q. Now, Dan, I call your attention to the discrepancy in the two surveys of the Grant claim, Plaintiff's Exhibit "A" and Defendants' Exhibit

11. A. Yes, sir.

Q. Is there any way that a surveyor has of checking his survey after he gets through to see if it is correct or not?

A. Yes, sir, the method is called closing a survey.

Q. State whether or not the survey shown on the map of the Grant claim closes.

A. It does with more than fifty feet of the limitation. [206]

Mr. GILMORE.—I now offer in evidence the deposition of Mr. A. G. Kingsbury.

Deposition of A. G. Kingsbury.

My name is George Albert Kingsbury. I am 57 years old and my business is mining. I have been engaged in mining since 1898. I was born and reared in New England and first came to Alaska in 1898. I began mining in the Kobuk River country. I arrived in Nome from there about the 10th of July, 1899.

Q. Did you know a man by the name of Woodford N. Grant? A. Yes, sir.

Q. Do you know a man by the name of Andrew Jensen?

A. No, sir. (Continuing:) I knew the Grant placer claim also called and known as Bench No. 1 at the western base of Anvil Mountain. I first got acquainted with that claim in 1899. I had negotiations with the owner, Mr. Grant. I took an option about the last of July from Grant. It was an option to purchase and was in writing. I do not know where the writing is, I haven't it in my possession. I think it was destroyed the night the option terminated. The option was on fourteen claims belonging to W. N. Grant for a short term of days, until the expected arrival of a steamer, for the consideration of three hundred and fifty dollars. Mr. Grant was from New England, from the State of Maine.

Q. Do you know where Mr. Grant is to-day, or whether he is living or not? A. He is dead.

(Deposition of A. G. Kingsbury.)

Q. Do you know when he died, as near as you can tell?

A. Six or seven, possibly eight years ago. (Continuing:) I went upon the Grant claim at the time I took the option. I was accompanied by W. N. Grant. It was very close to the last of [207] July, 1899. It might have been the first or second day of August. Grant took me to the initial stakes and then to the corners.

Q. Have you been over the claim recently, during the past summer? A. Yes, sir.

Q. Do you know a claim known as the Moonlight or Lyng claim?

A. Yes, sir. (Continuing:) I have been familiar with the whereabouts of the Moonlight claim since I knew the Grant, about that time. I know where the initial mound or monument of the Bob Lyng claim is situated on the ground. The initial stake of the Grant claim as pointed out and indicated to me by Grant at that time in 1899, was at the same place or mound of the initial stake of the Lyng claim; they were both together. I know where the corner stakes of the Grant claim were marked on the ground at that time. The stakes and mounds of the Grant claim as marked on the ground to-day, are the same as they were in the last of July or first of August, 1899. At that time the corners were marked with small willows; there were two, three or four small shovels of earth turned up against each stake at each of the corners and the initial stake. The corners and initial stake of the Grant claim at

(Deposition of A. G. Kingsbury.)

that time were plainly visible.

Q. At the time you and Mr. Grant were there in July or August, 1899, did you observe any markings or monuments of any kind within the boundaries of the Grant claim as then marked on the ground indicating any other locations? A. No, sir.

Q. From your observations at that time if there had been any mounds or monuments within the borders or boundaries of the Grant claim, would you have seen them? [208]

A. I think so. (Continuing:) I am not positive when I was next on the Grant claim, but it was two or three days after. I went out to see some of the other claims on Twin Mountain and American River and we came back down American Creek and crossed the Grant claim. Mr. Grant was with me and we came onto the Grant claim and he wanted to show me that he could find gold there, that he could find gold. That was during the time that I had my first option on the claims. He took me down to a place on the side next to Little Creek, I should say it was halfway between the present location of the railroad and the southwest corner.

Q. And state whether or not at that time he indicated to you where he had been working prior to that time. A. He did.

Q. And what was the character of the work?

A. Well, when we got there he said somebody had been "sniping" in the same place where he first worked. We went there and found good colors of gold.

(Deposition of A. G. Kingsbury.)

Q. State whether or not the prospects you found there at that time justified you in doing anything further with that claim.

A. Yes, sir. (Continuing:) The gold that we discovered at that time was within the boundaries of the claim as it is now marked on the ground. After my first option ran out I secured another.

Q. Why did the first option run out?

A. I failed to receive the cash I expected from the States in time.

Q. When did you take that second option that you speak of?

A. Later in August, 1899. (Continuing:) The second option was [209] in writing also; it is with the Pacific Coal & Transportation's papers. I have not a copy of it. Briefly the substance of the option was one thousand dollars for an undivided one-half or 51 per cent on fourteen claims, including what we called then the Moonlight or Grant claim. They were the same claims the prior option was on. I went outside in the winter of 1899 and 1900, and so did Mr. Grant.

Q. Mr. Kingsbury, what company, if any, did you organize or assist in organizing during the winter of 1899 and spring of 1900?

A. The Corwin Trading Company.

Q. And state whether or not they did business in Nome in 1900.

A. They did. (Continuing:) I was their agent and was in full charge of their affairs as agent.

Q. Do you know whether or not, of your own

(Deposition of A. G. Kingsbury.)

knowledge, that second option was taken up?

A. It was.

Q. And whether or not deeds passed between Mr. Grant and yourself and the Corwin Company?

A. They did.

Q. Now, do you know whether or not that deed was recorded in the spring of 1900 when you returned? A. I am very sure it was.

Mr. GILMORE.—I offer a certified copy of the location notice of the Grant claim, known as Bench No. 1 Moonlight, by W. N. Grant.

Mr. SCHOFIELD.—We object to it as being wholly incompetent, irrelevant and immaterial.

The COURT.—Objection overruled. It may be received and marked Defendants' Exhibit 13, said exhibit being as follows: [210]

[Defendants' Exhibit No. 13.]

LOCATION NOTICE.

Claim No. 1 Bench, Cape Nome Mining District.

I, the undersigned do this 9th day of January, 1899, locate and claim 20 acres of placer mining ground on this mountain known as Anvil, described as follows: Commencing at the eastern end of Robert Lyng's Moonlight Claim and extends in an easterly direction 1320 ft. & 330 on each side of the center stake. This claim is located on the Western base of Anvil Mt.

W. N. GRANT,
Locator.

Witness:

A. JENSEN.

(Deposition of A. G. Kingsbury.)

Filed for record 10:10 P. M. January 17, 1899.

G. W. PRICE,
Deputy Recorder.

Recorded in Vol. 3, page 59 of the records of the Cape Nome Mining District.

Mr. GILMORE.—I now offer in evidence deed from Woodford N. Grant to the Corwin Trading Company, of an undivided one-half interest in Bench No. 1 or Grant claim together with the endorsement on the back of said deed of the recorder showing deed of record in the Cape Nome Mining District, District of Alaska.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 14.

(Recital:) Said instrument being a deed dated March 31, A. D. 1900 between W. N. Grant of Lynn, Mass., and the Corwin Trading Co., conveying an equal one-half part of Bench claim No. 1 or Grant claim, and other claims, and bearing the endorsement of the recorder of the Cape Nome Mining District, District of Alaska showing the deed was recorded June 6, 1900 in the Cape Nome Recording office.
[211]

Mr. GILMORE.—I now offer deed in evidence from the Corwin Trading Company to the Pacific Coal & Transportation Company of the same property covered in the former deed, said deed being acknowledged, witnessed and duly recorded, and I further offer the certificate of the recorder of said deed in the Cape Nome Mining and Recording District, District of Alaska.

(Deposition of A. G. Kingsbury.)

The COURT.—It may be received in evidence marked Defendants' Exhibit 15.

(Recital:) Said instrument being a deed from the Corwin Trading Co. to the Pacific Coal & Transportation Co. of an undivided one-half interest in the Grant Claim and other property, bearing date the 8th day of August, 1901, and recorded in Vol. 96, page 192, on the 16th day of October, 1901, in the office of the recorder of the Cape Nome Mining District, District of Alaska.

Q. Were you on the Grant claim in the spring or summer of 1900 when you returned to Nome?

A. Yes, sir. (Continuing:) I was on the Grant claim a great many times that summer. I inspected the boundaries of the Grant claim that summer. The corners and the initial stake were still standing and stood in the same places that they now stand in.

Q. And what work, if any, was done on the Grant claim by you for the Corwin Trading Company in the year 1900?

A. There was quite a little prospecting done, and work on the southern end.

Q. State at whose expense the work was done.
[212]

A. The Corwin Trading Company's. (Continuing:) I supervised the work myself, one of my men, named Cony Weston, took charge of the work. On the lower half of the claim he went down to water, I did not measure the shaft but I should say ten feet, and he then dug north about the same depth. When I speak of the lower half of the claim I mean the half

(Deposition of A. G. Kingsbury.)

upon which the initial stake was, towards the south-west corner of the claim.

Q. Now, Mr. Kingsbury, do you know the portion of the claim in controversy in this lawsuit?

A. Approximately, yes.

Q. And state where Cony Weston worked in 1900.

A. Part of his work was on that portion, the part in controversy. (Continuing:) I could not say how many times I was on the Grant claim in 1900; I had two sets of men working north of there on Twin Mountain and Butterfield Canyon and I frequently rode by there. My best judgment is that I was on the Grant claim a great many times. There was never any other person than me and my men in the physical possession of the Grant claim or the ground within the boundaries of the Grant claim, in 1900. There was not any markings or stakes or monuments within the exterior boundaries of the Grant claim in the year 1900, to my knowledge.

Q. In the year 1901 what other corporation, if any, was organized by you or your associates, with reference to taking over the properties of the Corwin Company?

A. The defendant the Pacific Coal & Transportation Company.

(Witness continuing:) I was manager or agent of the Pacific Coal & Transportation Company in Nome in 1901. The deed from the Corwin Trading Company to the Pacific Coal & Transportation Company was left to the secretary of the company to attend to.

(Deposition of A. G. Kingsbury.)

Q. State whether or not in the year 1901 you were upon the Grant claim.

A. Yes, sir. (Continuing:) I was on the Grant claim in 1901 a great many times. The Pacific Coal & Transportation Company was in the possession of the claim in that year. There was quite a little prospecting done by them at the expense of the Pacific Coal & Transportation Company. The prospecting was done under my direction. The work was done by A. D. Rogers and Mike Leary who were anticipating taking a lay. The work done was at the expense of The Pacific Coal & Transportation Company. They sunk a shaft further north of the other work done by Cony Weston. I inspected the shaft and I should think it was at least 14 feet deep. They also dug a trench into the hill, running northwest and southeast. In 1901 I was mining on the same claims on Twin Mountain and Butterfield Canyon and in riding my horse to and from I always crossed the Grant claim. I observed the original Grant stakes that were pointed out to me by Grant; they were standing marking the corners and the initial stake in 1901, at the same place they were when Grant pointed them out to me in 1899, and in the same places that the Grant stakes stand to-day.

Q. What did you do or cause to be done in 1901 to more particularly mark the Grant claim?

A. I made larger mounds.

Q. Where? A. Around each of the five stakes.

Q. And what were the character of the mounds that you erected in 1901?

(Deposition of A. G. Kingsbury.)

A. They were sod; one, the initial, I put a good-sized mound.

(Witness continuing:) I put some flat rocks that they had uncovered, [214] taking them out of the trench near the railroad. The mounds I placed around the corners were the same as around the initial, made of sod but not so large as the one I put at the initial stake, but I put no stone around the corners.

Q. And state whether or not at the time you built those mounds the five original Grant stakes that Grant pointed out to you in July or August, 1899, were still standing.

A. Yes, they were all standing.

Q. And where was the shaft that you dug in 1901 with reference to where the railroad now is, was it above or below?

A. Below, that was southwest of the trench.

Q. Then state whether or not the shaft dug in 1901 was within the ground in controversy.

A. It must have been.

Q. Now, Mr. Kingsbury, state whether or not in the year 1901, you did any other act or thing to more particularly define the Grant claim, besides building these mounds you have told of.

A. Yes, sir, I made an amended notice of location.

Q. I hand you here an exhibit, please examine it briefly and state whether or not you know what it is.

A. It is my amended location notice of the Grant claim.

Q. And state whether or not you filed a copy of the amended location for the Pacific Coal & Transporta-

(Deposition of A. G. Kingsbury.)

tion Company in the Cape Nome Recording office.

A. I did.

Mr. GILMORE.—I now offer in evidence, if the Court please, the exhibit identified by the witness, being certified copy of the amended notice of the Grant claim. [215]

Mr. SCHOFIELD.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled. It may be received in evidence, marked Defendants' Exhibit 16. Said exhibit being as follows:

[Defendants' Exhibit No. 16.]

“ #12413.

AMENDED LOCATION CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, That I the undersigned have this 4th day of October, 1901, amended, located and claimed and by these presents do amend, locate and claim, by right of the original discovery, this 20 acre placer claim, located by W. N. Grant, on the 9th day of Jan. 1899. This further additional and Amended certificate of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location, description or record and of taking in and acquiring all forfeited or overlapping ground, and of taking in any part of any overlapping claim, which has been abandoned and of securing all the benefits of the law applicable to amended location certificates.

This claim is described as follows, to wit:

Beginning at this initial monument stake, standing

(Deposition of A. G. Kingsbury.)

beside the Northeast end center initial stake of the Robt. Lyng Moonlight claim and extending thence in a southerly direction 330 feet to stake #2, thence in an Easterly direction 1320 feet to stake #3, thence in a northerly direction 660 feet to stake #4, thence in a westerly direction 1320 feet to stake #5, thence in a southerly direction 330 feet to point of beginning. The western end line of this claim and the Eastern end line of the Robert Lyng Moonlight claim is identical and the same. [216]

On said Robert Lyng claim is located the spring and water supplying Nome City, also dam and building of same. The claim of which this is an amended notice, is the first bench on Moonlight Creek and extends toward and on to southwestern base of Anvil Mountain.

The annual assessment work required by law has been done on this claim during seasons of 1900 and 1901.

PACIFIC COAL & TRANSPORTATION CO.

By A. G. KINGSBURY.

Witness:

E. L. HOWARD.

Filed for record—10:24—A. M. Oct' 7th, 1901.

T. M. REED,

Recorder.

E. Whittard,

Deputy.

Recorded in Vol. 95, page 225."

(Witness continuing:) I wintered in Nome in the winter of 1900; I was out over the Grant claim sev-

(Deposition of A. G. Kingsbury.)

eral times during the winter.

Q. And during the year 1901 that you have just detailed, the year that you built the mounds and amended the location, state whether or not any person was in the physical possession, or claimed the physical possession of any of the Grant claim, as marked on the ground.

Mr. COCHRAN.—Objected to as calling for a conclusion of law.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Were there any stakes, mounds or monuments of any character whatever, within the exterior boundaries of the Grant claim indicating that anybody claimed it?

Mr. COCHRAN.—Objected to that as wholly leading.

The COURT.—Objection sustained, to which ruling [217] of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I was out in the States during the winter of 1901 and spring of 1902 and I returned to Nome in 1902. The Corwin Company operated the steamer "Corwin," that is where it got its name. I was on the Grant claim in the summer of 1902 a great many times. I was still the agent and manager of the Pacific Coal & Transportation Company and in charge of its affairs at Nome. In the summer of 1902 there was work done upon the Grant claim at my request. It consisted of digging around the lower part of the claim. Some of it was

(Deposition of A. G. Kingsbury.)

inside of the limits of the ground in controversy and some of it was just north. In 1902 I again observed the mounds and stakes of the Grant claim. They were in the same place that they always stood. In 1902 I got some 2x4's made at the Corwin buildings and painted the numbers of the stakes, five of them, and placed them in the five mounds that I had previously made. At the initial mound I put stake No. 1. It was a 2x4 sticking above the ground $2\frac{1}{2}$ or 3 feet perhaps, and numbered the figure 1 with carriage paint. At the southwest corner, the corner towards Little Creek roadhouse, I marked figure 2 on a stake with carriage paint; at the southeast corner, in the direction of the Bessy mine, I marked with the figure 3 in carriage paint at the northeast corner, toward Anvil mountain, I marked the figure 4 in carriage paint on a stake; at the northwest corner towards Discovery claim on Anvil, I marked the stake with the figure 5. My impression is that it was soon after the snow left in 1902 that I marked the stakes. I am not positive about that. I numbered them at the Corwin buildings. My recollection is that it was in 1902. I had seen some jumper stakes that I had [218] taken out and thrown away during the summer of 1902. They were stakes put there by jumpers in 1902, I saw them putting them there. I conversed with them. The Eagle Fraction is an irregularly staked claim. I don't know what claim the jumper was trying to stake, but it was not No. 1 Bench Moonlight. It is not a claim that is staked anywhere in that country now. Cony Weston called my attention to a stake placed up where the road is now at the base

(Deposition of A. G. Kingsbury.)

of Anvil mountain, the old road, it was placed there that same day; that was in 1900.

Q. And was there ever any stake at that point where that stake was set prior to that time?

A. No, sir, nor since. (Continuing:) That was a very prominent place and I would have seen it if there had been one.

Q. Were you on the claim this summer when any photographs were taken? A. Yes, sir.

Q. Please examine the photo that I hand you and state if you know what it is a picture of.

A. That is the mound in which the initial stake of the Grant was placed.

Q. And were you present when that photograph was taken? A. Yes, sir.

Q. And which stake in the picture is the Grant claim stake?

A. The 2x4 at Mr. McCumber's right elbow.

Q. Is that stake marked?

A. I cannot see but I know it is marked.

Q. What is it marked? A. No. 1.

Q. State whether or not that is the stake that you placed there in the year 1902. A. Yes, sir. [219]

Q. Where was the original initial stake pointed out to you by Grant in 1899 with reference to that stake? A. At the side of it.

Mr. GILMORE.—I now offer in evidence the photograph taken in 1911, showing the initial mound of the Grant claim, built by the witness in 1901.

The COURT.—It may be admitted in evidence marked Defendants' Exhibit 17, said photograph being as follows: [220]

[Defendants' Exhibit No. 17.]



(Deposition of A. G. Kingsbury.)

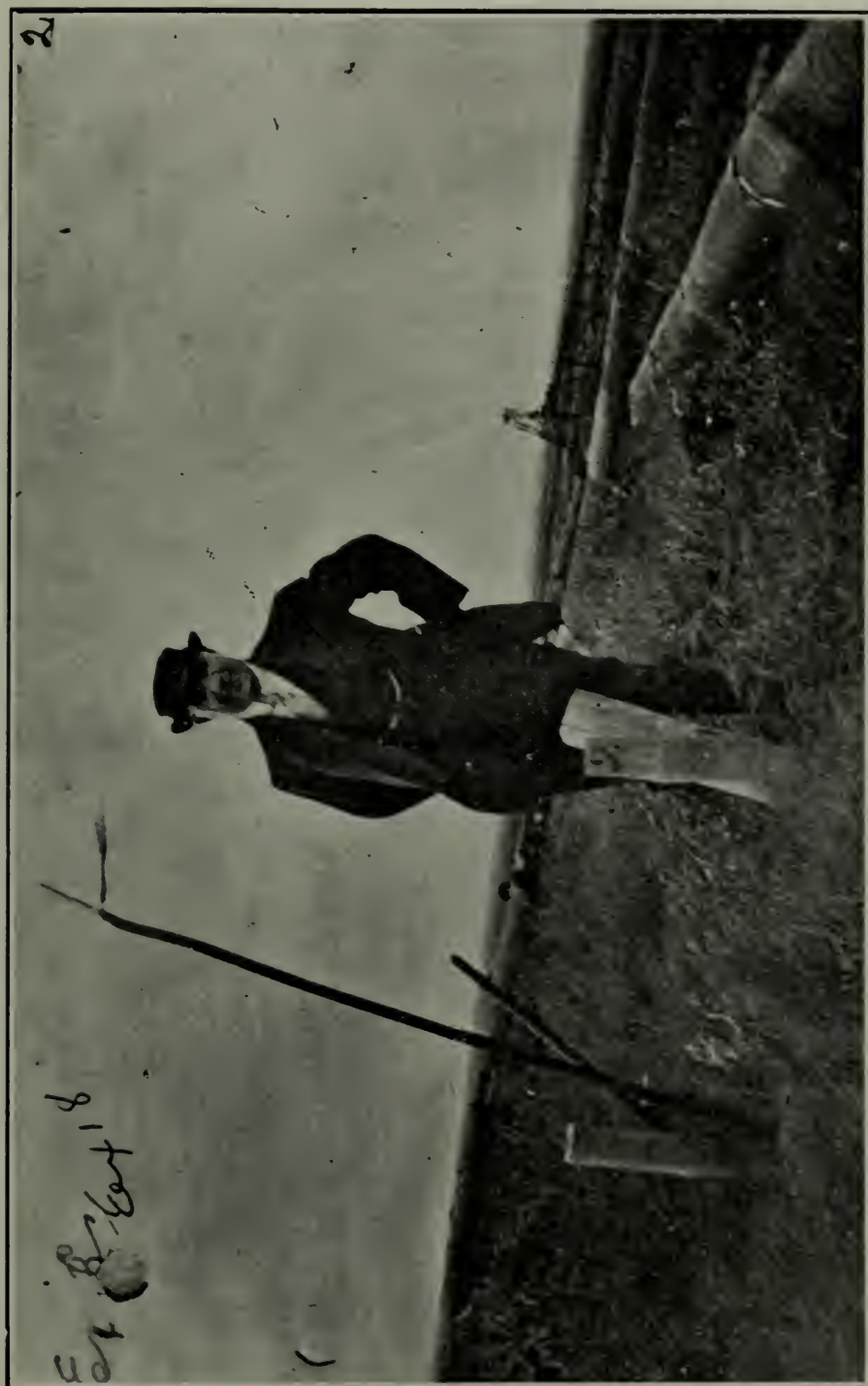
Q. Examine the photograph I hand you marked in the corner 2, and state, if you know what that is.

A. That is the southwest corner of the Grant claim. (Continuing:) That is the corner towards Little Creek roadhouse. I was present when the photograph was taken. The photograph represents the southwest corner stake the 2x4 marked in paint figure 2. That is a picture of the mound that I built in 1901 and the stake that I placed at that corner; that was where the original southwest corner of the Grant claim as identified to me by Grant in 1899.

Mr. GILMORE.—I now offer the photograph in evidence, if the Court please.

The COURT.—Photograph admitted in evidence marked Defendants' Exhibit 18. Said photograph being as follows: **[222]**

[Defendants' Exhibit No. 18.]



(Deposition of A. G. Kingsbury.)

Q. Now, please examine the photograph marked 3 in the corner, and state, if you know, what it is.

A. That is the southwest corner of the Grant claim. (Continuing:) It is the corner in the direction of the Bessie mine. The photograph represents the southeast corner of the Grant claim, showing the stake 2x4 marked with the figure 3 in carriage paint. It shows the mound I built in 1901 and the stake that I put there afterwards. That is where the original willow stake that marked the southeast corner indicated by Mr. Grant to me stood in 1899.

Mr. GILMORE.—I now offer the photograph in evidence, if the Court please.

The COURT.—It may be admitted in evidence marked Defendants' Exhibit 19. Said exhibit being as follows: [224]

[Defendants' Exhibit No. 19.]



(Deposition of A. G. Kingsbury.)

Q. Examine the photograph I hand you marked 4 in the corner, and state, if you know, what that is.

A. That is the northeast corner of the Grant claim. (Continuing:) The corner toward Anvil mountain. The Grant stake is the one upon which Mr. McCumber has his arm in the photograph, and is marked figure 4. The photograph shows the mound that I built in 1901 and the Grant stake that I placed there afterwards. At the time Mr. McCumber and I took that picture, this summer, 1911, the original Grant stake, the very small willow, was standing and it is shown in the photograph alongside of the 2x4.

Mr. GILMORE.—I now offer the photograph in evidence.

The COURT.—It may be received and marked Defendants' Exhibit 20. Said photograph being as follows: [226]

[Defendants' Exhibit No. 20.]



(Deposition of A. G. Kingsbury.)

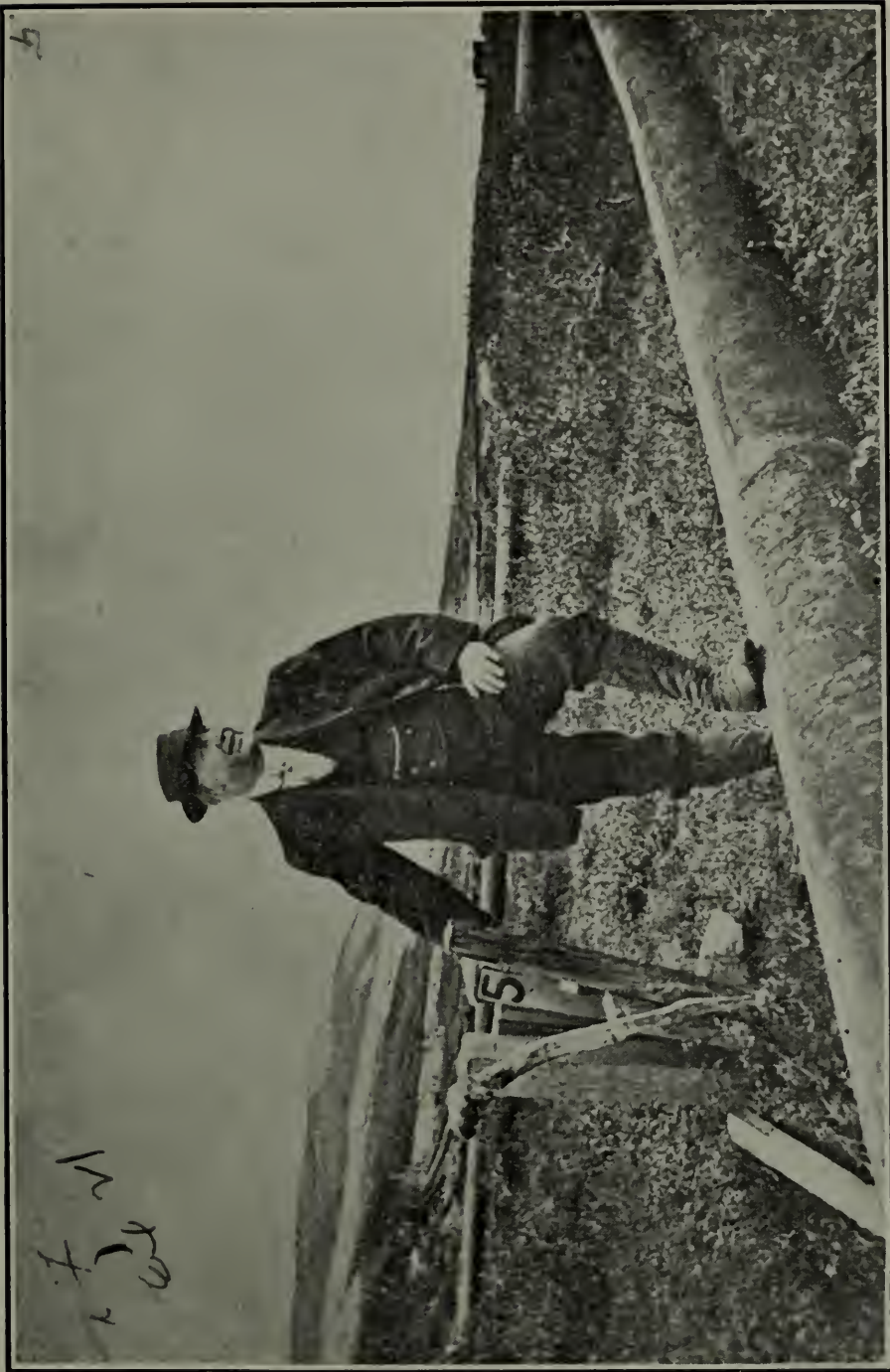
Q. Please examine the photograph I hand you marked 5 in the corner, and state what it is a photograph of.

A. That is a picture of the northwest corner of the Grant claim, the corner towards Discovery on Anvil. (Continuing:) The 2x4 bearing the figure 5 is the Grant stake. It was placed there by me. It stands in the same place that the corner was indicated to me in 1899 by Grant.

Mr. GILMORE.—I offer the photograph in evidence.

The COURT.—It may be received in evidence marked Defendants' Exhibit 21. Said exhibit being as follows: [228]

[Defendants' Exhibit No. 21.]



(Deposition of A. G. Kingsbury.)

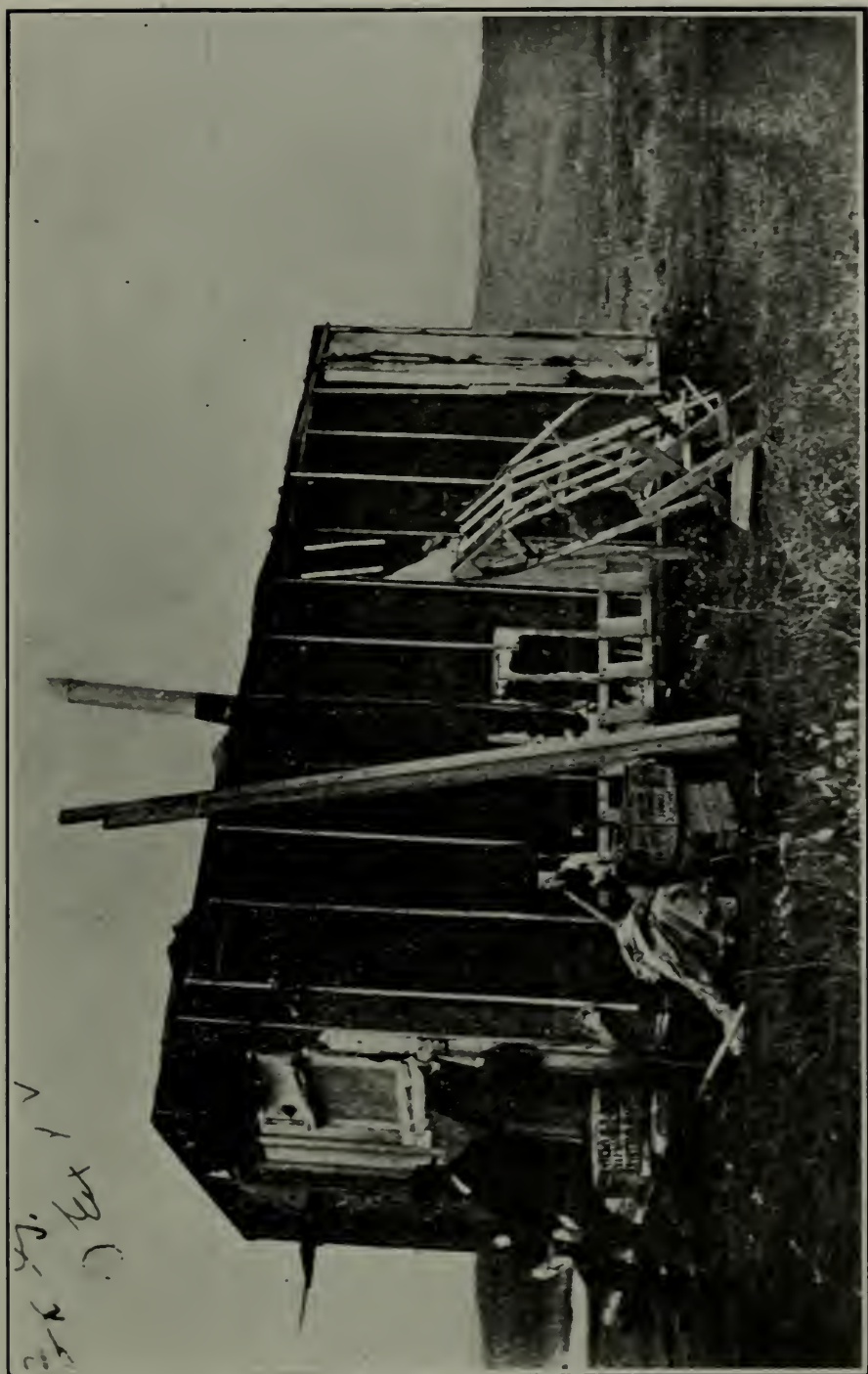
Q. I hand you another photograph. Please state, if you know, what that is a picture of.

A. A cabin that is on the Grant claim. (Continuing:) It is on the south part above the railroad and is the cabin referred to near the railroad track. This photograph was taken at the time I was out there with Mr. McCumber this summer.

Mr. GILMORE.—I offer the photograph in evidence, if the Court please.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 22. Said exhibit being as follows: [230]

[Defendants' Exhibit No. 22.]



(Deposition of A. G. Kingsbury.)

Q. Please examine this photograph and state, if you know, what it is.

A. It shows the shaft on the Grant claim. (Continuing:) The shaft near the southwest corner and within the ground in controversy. The photograph was taken when Mr. McCumber and I was out at the shaft recently.

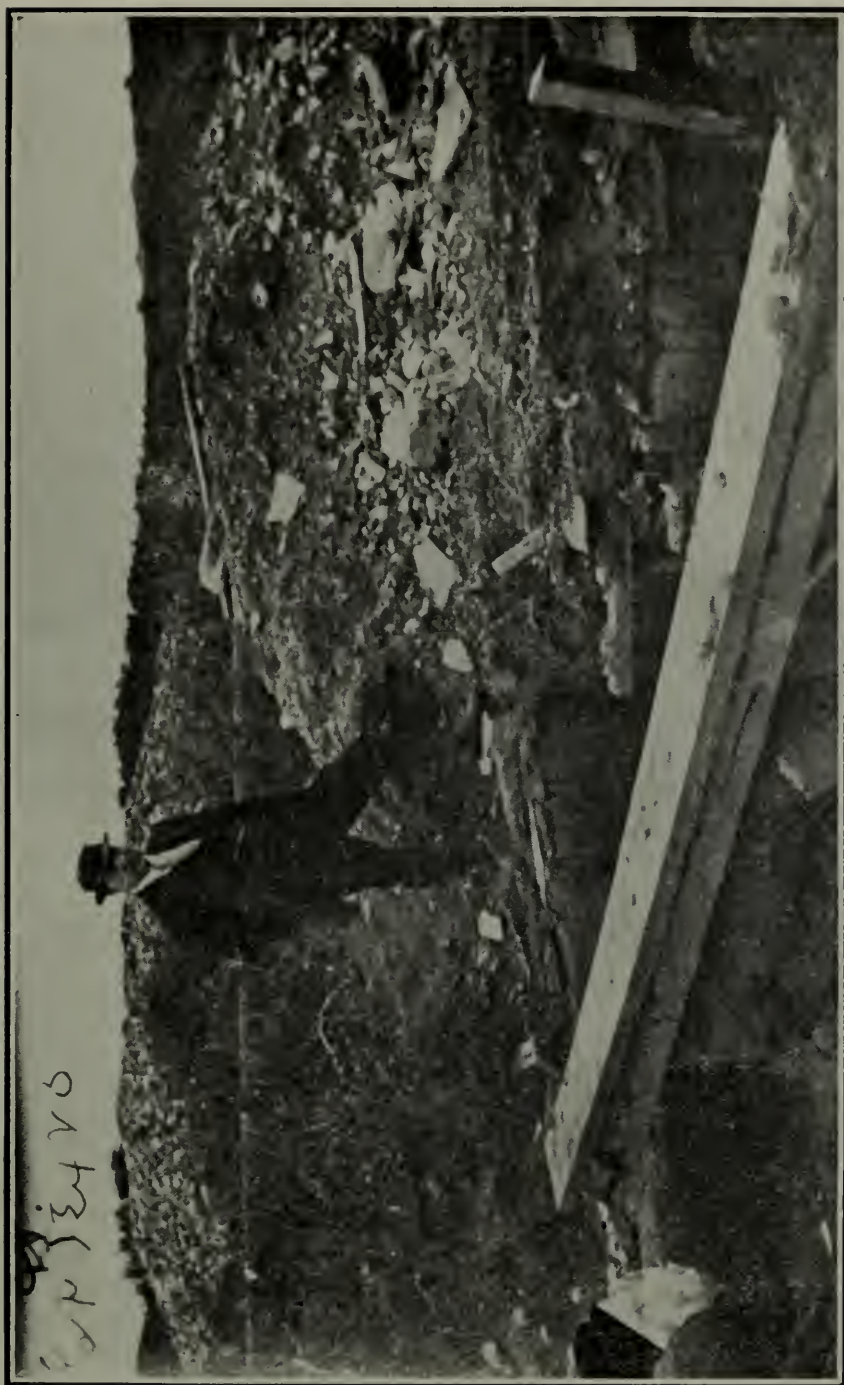
Q. Did you notice a pile of tailings just behind Mr. McCumber and can you state of your own knowledge what they represent in the photograph?

A. That represents the Bard and Muther tailings. (Continuing:) It is the tailings from the work of 1904 and 5, as I remember it, and was within the ground in controversy.

Mr. GILMORE.—I offer the photograph in evidence.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 23. Said exhibit being as follows: [232]

[Defendants' Exhibit No. 23.]



(Deposition of A. G. Kingsbury.)

Q. Examine this photograph and state, if you know, what that is a photograph of.

A. It shows tailings on the south half of the claim. (Continuing:) It is a photograph of the portion of the Grant claim the southern third. It is the part known as the west end towards the Lyng or Moonlight claim.

Q. And state whether or not that is a picture of a portion of the ground in controversy. A. It is.

Q. What, if you know, of your own knowledge, are the piles of rock or tailings?

A. These are tailings of Bard and Muther and in part the Russians.

Q. And state whether or not those are tailings of work done by laymen under the Grant title, if you know of your own knowledge.

A. Yes, sir. (Continuing:) That picture was taken at the time Mr. McCumber and I took the others; all the photographs were taken the same day.

Mr. GILMORE.—I now offer this photograph in evidence.

The COURT.—It may be received and marked Defendants' Exhibit 24. Said exhibit being as follows: [234]

[Defendants' Exhibit No. 24.]



(Deposition of A. G. Kingsbury.)

Q. In 1902 state whether or not the defendant, Pacific Coal and Transportation Company gave any lease or leases on the Grant claim. A. It did.

Q. I hand you an exhibit, Mr. Kingsbury, please examine it and state if you know, what it is.

A. I do.

Q. What is it?

A. It is a lease I gave Pat Winter and George Crawford.

Q. You say you gave it, for whom?

A. For the Pacific Coal & Transportation Company.

Q. And upon what claim?

A. Upon the Grant claim.

Mr. GILMORE.—We now offer the written lease in evidence, being the exhibit identified by the witness, the original instrument, for the purpose of showing that the defendants were in possession of the ground in controversy.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 25. Said exhibit being as follows:

[Defendants' Exhibit No. 25.]

“THIS INDENTURE made the 15th day of July, A. D. 1902, by and between A. G. KINGSBURY, Agent, Lessor and P. D. WINTER & GEORGE CRAWFORD, Lessees, WITNESSETH:

That the lessee for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved and by said Lessees to be paid and performed, has granted, demised and let unto the

said Lessees on a seventy-five per cent lay or lease all of the placer mining grounds known as "Moonlight" lying on the southern base of Anvil mountain and staked by Woodford N. Grant, the same is situated in the Nome Mining District, District of Alaska and belongs to the Pacific Coal and Transportation Co., to have and to hold unto the said Lessees during the open mining season of 1902, or water runs freely in sluice boxes without freezing, At which time this contract will expire, unless sooner revoked, forfeited or determined through the violation of any covenant hereinafter against the said tenant.

And in consideration of said demise, the said Lessees [236] covenant and agree with said Lessor as follows, to wit: To enter upon said mine or premises and work the same in *best* manner necessary to good and economical placer mining and to work said ground as steadily and continuously as possible with as many men employed as can be worked to advantage and without waste or sacrifice of the present or future value of said mine and that any failure so to do may be considered a violation of this contract. All gold taken from said mine to be divided between Lessor and Lessees as follows, 25 per cent to Lessor and 75 per cent to Lessees, all cleanups or gold mined from said claim by Lessees to be divided upon demand of Lessor.

The Lessees hereby agree not to assign their lease of said claim or any portion of it or any interest thereunder and not to sublet the premises or any part thereof without the written consent of said

(Deposition of A. G. Kingsbury.)

Lessor and not to allow any person or persons except the said Lessees, their employees and co-laborers to take or hold possession of said premises or any part thereof under any pretense whatsoever. Upon the violation by said lessees or any person employed by or co-laboring with them of any of these covenants and agreements the terms of this lease shall, at the option of the Lessor, expire and said Lessor or his agent may enter upon said premises after making demand for same in writing, without process of law.

Each and every clause of this indenture shall extend to the heirs, executors and administrators of all parties hereto. In witness whereof the said parties, Lessor and Lessee, have hereunto set their hands and seals on day and date first written.

PACIFIC COAL & TRANSPORTATION
CO.,

A. G. KINGSBURY, Agent, [Seal]
Lessor.

P. D. WINTER, [Seal]
GEO. CRAWFORD, [Seal]
Lessees.

Witness

_____,”

Q. State whether or not the lessees under this lease took possession of the Grant claim, under the terms of the lease.

A. They did. (Continuing:) They performed work under the lease. I was not there while they were actually digging but I know that they worked

(Deposition of A. G. Kingsbury.)

down where the railroad now is, and the southwest line of the claim, within the ground in controversy. I also caused the claim to be surveyed in September, 1902. I employed Mr. Arthur Gibson and he surveyed the Grant claim for the Pacific Coal & Transportation Company and afterwards furnished me with a blue-print of the survey. He surveyed it with reference [237] to the mounds that I identified, those shown in the photographs. He also at the same time surveyed the Napa claim for me. I was the owner of the Napa. In 1902 my headquarters were in town. I put my cabin or tent on the Napa in 1905. Prior to that time I had a temporary structure there. The going rate of wages for the years 1901 and 1900 in that location, was a dollar an hour and at that rate there was several hundred dollars' worth of work done on the ground by the Pacific Coal & Transportation Company. There was more work done in 1901 than in 1900. Mr. Grant nor his associates had not offered to do any work during either of those years on the Grant claim. I was not back in Nome in 1903. I quit the employ of the Pacific Coal & Transportation Company about the first of the year 1903. Miss E. L. Howard was the agent and represented the Pacific Coal & Transportation Company in Nome in 1903. After the fall of 1903 I was next back on the Grant claim the 31st of July, 1905. That was when I returned to Nome from the outside. I came in on the steamer "Senator." I started for the claim on the night of the 30th of July and moved out to the Napa.

(Deposition of A. G. Kingsbury.)

The Napa corners the Grant claim. I crossed the Grant claim in the summer of 1905 nearly every day after I moved onto the Napa. I saw the initial stake and the corners and they were still in the same place they were in when I first saw them, and where they are to-day. I was on the Grant claim again in 1906 and 1907. I observed work being done on the Grant claim in 1905 by Messrs. Bard and Muther. They were working on the southwest end very near the initial stake. They were sinking shafts, [238] and tunneling and engaged in taking out a dump of pay gravel. They sluiced during the summer but I do not fix the date. Their work was on that portion of the ground in controversy that was done on the Grant claim in 1906. I don't recall at this time whether Bard and Muther continued their work with the Russians, or whether the Russians did it on their own account. I did not have charge of the claim then but I passed there every day by their work, going to the Moonlight Springs for water. I was living on the Napa. I was less than a quarter of a mile from where Bard and Muther were working and less than a quarter of a mile from where the Russians were working. The Russians worked very near the same place that Bard and Muther worked.

Q. Do you remember in the fall of 1902, before leaving Nome, of letting any other lease than the Winter and Crawford lease?

A. Yes, to Howard and Doverspike.

Q. Did you execute that lease? A. I did.

(Deposition of A. G. Kingsbury.)

Q. On behalf of the Pacific Coal & Transportation Company? A. Yes.

Q. Do you know of your own knowledge whether they worked the Grant claim in 1902 and 1903?

A. They did. (Continuing:) They took out dumps on the southwest end within the ground in controversy. The work done by Bard and Muther were also within the ground in controversy and also the work done by the Russians in 1906 was within the ground in controversy.

Q. What was the value of the work done, including the Sperry work, on the Grant claim from 1900 to 1907, within the ground in controversy? [239]

A. I do not know exactly but it could not have been less than five thousand dollars.

Q. During that time, Mr. Kingsbury, of your own personal knowledge, did anyone ever make any claim to any of the ground where those parties worked, any claim to ownership?

A. Not except those jumpers that I named before.

Q. Did the Pioneer Mining Company or its grantors ever make any claim to that portion of the Grant claim upon which this work was done, during all those years? A. Not to my knowledge.

Q. Did Mr. Andrew Jensen or Mr. D. W. McKay or the Pioneer Mining Company ever make any claim of ownership of the ground at any time you were in charge of either the Pacific Coal & Transportation Co. or the Corwin Company?

A. No, sir.

Q. When was the first time you ever heard of the

(Deposition of A. G. Kingsbury.)

claim known as the Moonlight Bench or No. 1 Bench on Moonlight, upon which the plaintiff, Pioneer Mining Company, now claims the ground, when was the first time you ever heard of such a claim?

A. I don't remember that I ever heard of it in the earlier years; I don't recall that name as applied to any claim.

Q. Was there ever any monuments or markings of any kind or character in that vicinity, to indicate such a claim, on the ground?

A. Not to my knowledge.

Q. Were there ever any stakes or monuments or mounds of any [240] character within the Grant claim marking or claiming to mark the boundaries of a claim known as No. 1 Bench, on Moonlight?

A. Not to my knowledge. (Continuing:) I know where the East Fork of Moonlight is; it lies south of the Grant claim. The East Fork of Moonlight is usually covered by willows. There is water that runs down there when the snow melts. Water runs across the southwest corner of the Grant claim. I was in that vicinity in the years 1908, 1909, 1910 and 1911. All the time I maintained a cabin there and was back and forth. I was in that vicinity every year since 1899 with the exception of 1903 and 4, and have been very familiar with the boundaries of the Grant claim at all times. The boundaries and monuments of the Grant claim have never been moved. The first time I heard of the Pioneer claiming a portion of the Grant claim was about the time they started suit in the fall of 1910.

(Deposition of A. G. Kingsbury.)

Q. Now, Mr. Kingsbury, so as to be absolutely sure and have it in the record, you detailed to us about Mr. Grant pointing out the initial stake?

A. Yes.

Q. Just state what Mr. Grant did that day.

A. He took me to the initial stake and corner. (Continued:) We came by as we went to the initial stake, the southwest corner, but did not go to it; he in a casual way referred to it. I saw the stake at that time; it was a small willow. We then went to the initial stake and then back to the southwest corner and on around the claim. The claim was marked with small, crooked willows. We went to each corner. Mr. Grant pointed out each stake to me.

Q. How did you know they were the Grant stakes? [241]

A. Because he said they were and said he placed them there.

(Witness continuing:) I am about to leave the District of Alaska, I have a ticket on the steamship "Victoria" and expect to leave Sunday or Monday to be gone until next spring. I expect to return here next June, 1912. I am familiar with the slopes of Anvil mountain and with what is known as the westerly base of the mountain; also the contour in that vicinity. With the terraces it is a general incline from the northeasterly end or corner of the Grant claim to the southeasterly end, sloping southwesterly, to the southwesterly corner. Before the ground was disturbed in any way by mining, the

(Deposition of A. G. Kingsbury.)

Moonlight Springs was considered the base of Anvil mountain and from there easterly out toward Little Creek in a general way, it was fairly level toward Little Creek roadhouse. There was not very much slope from there. There was some terraces or benches between the springs and the roadhouse. The only level ground on the Grant claim were the terraces or benches. The southwest end of the claim was covered with willows in 1899. On the southerly side of the claim the willows extended, I should say, three or four hundred feet and came down across to the center stake.

Q. State whether or not any portion of the Grant claim took in any part of what is called the vale or valley, and if so, what part of the claim.

A. Well, it was kind of a low flat place where the southwest corner stake was located. (Continuing:) It extended off into the willows I don't know how far, but there was probably fifty feet or more of flat ground. The water flowed across the southwest corner of the Grant claim in the spring at the time when the snow was melting. [242]

Q. Do you remember being on the Grant claim about a year ago, or thereabouts, the fall of 1910, at the close of navigation?

A. I went over there about as soon as I could after the vessels had gone, as soon as I could get there with my dog team.

Q. And state whether or not anybody was mining within the boundaries of the Grant claim at that time.

(Deposition of A. G. Kingsbury.)

A. Yes, the first time I went out with the dogs.

Q. That is referring now to the time you went out with the dog team?

A. Yes, 1910, it was the last of October or first of November.

Q. Who was conducting mining operations then, if you know? A. Mr. McCumber.

Q. Do you know where his men were living at that time? A. In a red cabin on the terrace.

Q. Is that the same red cabin you photographed, the cabin being in evidence? A. Yes.

Cross-examination.

(By Mr. LOMEN.)

I came to Nome on the 10th of July, 1899, from the Kobuk. I had not been in the Nome District before that time and was not familiar with any mining claims here, and had not met Mr. Grant before that time. I met Mr. Grant shortly after my arrival in Nome. It might have been within a week and it might have been within two weeks. Grant reached the beach in a little power boat and I saw him when he landed. I got acquainted with him at that time. When we first met he informed me that he had made locations and I became interested in the claims a very [243] few days afterwards. We went out to the Moonlight claim, as we always called the Grant claim. He made a memorandum agreement on the leaf of a note-book that he had in his pocket and we signed it. It was not acknowledged or witnessed and not recorded. There were fourteen claims mentioned in the memorandum, all on one leaf of the memoran-

(Deposition of A. G. Kingsbury.)

dum-book. When we went to the Grant claim we went directly to what is called the initial stake first. It was the center end stake, but in going to it we passed the southwest corner and he referred to it but we did not go directly to that point until we had been to the initial stake.

Q. Now, Mr. Kingsbury, did you observe what was written on that stake, the so-called initial stake?

A. I tried to.

Q. Could you make it out?

A. I could make out Grant's name.

Q. On that stake?

A. Yes, sir. (Continuing:) I did not fully make out anything else at that time. I saw another stake there. There might have been two. My impression now is that the other stake was driftwood or something of that sort. The willow stake was the Grant stake. I did not see anything else written or posted on those two stakes. Grant's certificate was gone, he remarked that as soon as we got there. We passed around the claim before we struck the northwest, that was the last stake we visited. At the northwest corner we found a small crooked willow. I did not see any writing on it nor any split in the top of the stake. I would not swear that it had not been opened at the top but I did not see it. There was a split at the top of the initial stake. [244]

Q. How do you come to remember that?

A. Because Grant was a man of many words and he exploded when he found the notice was gone and called my attention to that particular fact by his re-

(Deposition of A. G. Kingsbury.)

marks. He was not asking me to look at it.

Q. Did he tell you how he originally staked his claim, or with how many stakes?

A. Well, it worked out in his showing me. He did not tell me but he showed me. (Continuing:) I was familiar and fairly well acquainted with that part of the country. I have lived on the Napa claim more or less ever since 1902, except the two years I was gone. The Oldbaum claim joins the Napa claim on the west. I knew C. L. Spanggard but I did not know Otto Schueler. I am not sure but I think Rudolph located the Oldbaum claim. The westerly side of the Oldbaum claim is identical with the easterly side of the Napa as they were originally staked. There was a number of claims staked in there afterwards, the Little Johnney Fraction, the Gaffney Fraction, No. 2 East Fork on Moonlight, the Winter Fraction and the Carlson claim. The Eagle claim was down in there somewhere, I never could keep up with it, I remember hearing about the Jerome Fraction but I don't know its boundaries. I first knew the Napa claim in 1902. It was called the Depue claim, had the same corners.

Q. Now, the Carlson claim as you understood it, conflicted with the Napa? A. Yes, sir.

Q. And were those lines afterward corrected so as to make the lines parallel with the Napa?

A. Yes, sir.

Q. When was that? [245]

A. I don't know, two or three years ago. (Continuing:) The No. 2 East Fork on Moonlight claim

(Deposition of A. G. Kingsbury.)

was staked a few days after the Napa; I do not remember the date of the Carlson location. When I bought the Napa claim I examined all of the corners. I don't remember whether I found any other stakes at the northwest corner of the Napa at that time or not. There might have been a stake there. I examined the southeast corner stake of the Grant claim when I first went there with Grant. I have been often at that corner since, and the corner is now where it always has been. There have been several stakes that appeared and disappeared at that corner since I was there with Grant. There is a ditch that passes that point, put there since. There have been two prospect shafts put down on the Oakland claim that are not very far from that corner. I don't know the boundaries of the Oakland claim. I never paid much attention to small excavations that were without the claims in which I was interested. I do not know where the northwest corner of the so-called Nelson or Carlson claim is. There is a stake just up on the terrace above the willows on the part of the bank that is directly east of the cabin; there has been several stakes there. They were not mounded up very much, maybe a little, hardly to notice. There might be two bunches of stakes there at the present time, I don't remember about that. The first bunch you speak of it was sometime ago I first observed them, one stake several years ago.

Q. And did you ever look to see what was written upon those stakes? A. Yes, sir.

Q. What did you find on them?

(Deposition of A. G. Kingsbury.)

A. I never found anything that I could make out what it was. [246]

(Witness continuing:) I know a survey stake usually when I see it, there would be a nail in it. I don't remember seeing one scribed at that point. The first stake I noticed at that point was a small slender stake standing $4\frac{1}{2}$ feet, I should guess. That was when I first saw it, when I built my cabin on the Napa in 1905. Since that time other stakes of the dimensions 2x4's and 2x3's have appeared at that place; I could not say positively when.

Q. Now, immediately east of that bunch of stakes did you find a small cut? A. Close to it?

Q. Yes, small excavation.

A. I have seen—what claim are you talking about?

Q. I am talking about the center of the Grant claim, about 200 hundred feet from the south line of it.

A. Well, no cuts but in the bank of this terrace which I—

Q. You are getting back to the southwest corner of the Grant claim?

A. No, I am halfway up—

Q. All right.

A. In that terrace, in that bank there has been more or less excavating on what I supposed was the Carlsen—

Q. Yes, but very close and within seven feet of the stake, there is an excavation that looks very old, is it there today? A. I do not know.

Q. Do you know who occupies the cabin on the

(Deposition of A. G. Kingsbury.)

Grant claim that you referred to?

A. Now, at the present time?

Q. Yes.

A. A man by the name of Smith. (Continuing:) He did not tell [247] me that three people were up there examining that cut last fall. I caused the Grant claim to be surveyed September 30, 1902, by Arthur Gibson. I do not know who carried the lines for him. I was there at the time and A. W. Lane and Spanggard. We were visited by Pat Winters and his associate. At that time we surveyed both the Napa and the Grant claims. Gibson said nothing to me at that time that I remember about surveying Bench No. 1 on Moonlight.

Q. Did you mention Andrew Jensen at that time in the presence of Arthur Gibson, Lane and Spanggard and discuss the question of the overlap of Bench No. 1 Moonlight affecting the Moonlight?

A. I don't remember of any such conversation, don't remember of having known of Mr. Jensen at that time.

Q. Did Mr. Spanggard tell you about any claim that was overlapping the Grant claim at that time?

A. I don't know that Mr. Spanggard discussed any ground excepting the Napa with me. (Continuing:) I don't remember that Spanggard discussed any of the claims, he had no reason to discuss them with me. I do not remember any remarks that Spanggard made. Spanggard and Lane were not interested in the claims except Spanggard was the agent for Gruer the former owner of the Napa.

(Deposition of A. G. Kingsbury.)

Gruer was not interested in the Pacific Coal & Transportation Company or the Corwin Company. Spanggard and Lane were present at the request of myself to identify the corners of the Napa. They did not identify any other corners of any claims to my knowledge at that time. I was with them while we surveyed the Napa. I don't think I went to all the corners of the Grant claim with them at the time.

Q. Did Mr. Spanggard in your presence and in the presence of [248] Mr. Gibson, out there on the ground at the time of the survey, explain how and by whom the Depue, the Nelson and the Moonlight No. 1 Bench claims were located?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. All I remember is that something was said about the Depue location, that is what vitally interested me. (Continuing:) I would not swear that he did not mention the Nelson Bench or Bench No. 1 Moonlight; I know that Spanggard identified the four corners of the Napa, I do not know that he identified anything else. I don't remember of hearing any conversation between Mr. Spanggard and any other person excepting regarding the claim for which I had him out there. Mr. Spanggard may or may not have identified the corner stakes of the Moonlight No. 1 Bench, I don't know. There might have been conversations between Spanggard and others

(Deposition of A. G. Kingsbury.)

about other claims than the Napa but if such conversations occurred I took no notice of them. They might have occurred. Spanggard may have pointed out the approximate place for the southeast and northwest corners of Moonlight Bench No. 1, but he did not do so to my knowledge.

Q. Did Mr. Gibson call Mr. Spanggard's attention to the fact that Moonlight Bench No. 1 overlapped or conflicted with the Robert Lyng claim, his Moonlight claim?

A. If he did I have no recollection of it, because it had no effect on me.

Q. Did Mr. Spanggard at that time, in the presence of Mr. [249] Gibson and Mr. Lane, say: "We made a location of the Moonlight Bench No. 1 overlapping Moonlight claim and we located it so intentionally to take in all the vacant ground between the Nelson Bench and the Moonlight claim"?

A. He may of but not to my knowledge.

Q. Did you not at the time ask Mr. Spanggard how it could be that Andrew Jensen, being a witness on the Grant location, would permit Grant to make his location overlapping the Moonlight Bench No. 1?

A. I do not remember asking that question. (Continuing:) I do not think so, and I do not remember any reply. As I remember it now, it seems to me I left a little before Gibson was through completing his survey. I don't know as a matter of fact, that Gibson also surveyed No. 2 Moonlight after completing the Napa and Grant. He may have, I don't know. The northwest corner of the Napa is six or

(Deposition of A. G. Kingsbury.)

ten feet perhaps over the line of the Grant. I first learned of the conflicting claims with the Grant claim about a year ago.

Q. You mean to say you never heard of the Moonlight or No. 1 Bench Moonlight prior to last year?

A. I suppose I have heard of it.

Q. Do you know who claimed it?

Mr. GRIGSBY.—I would like to have it entered in the record that Mr. Arthur Gibson is of counsel in this case.

Mr. GILMORE.—Please also note that he is coaching the attorney what to ask; that he is present and frequently coaching the attorney what to ask.

(Witness continuing:) I know where No. 2 East Fork Moonlight [250] claim is. I think it was located just after the Napa, in 1899. No. 2 East Fork runs east and west, the northwest corner of No. 2 East Fork must have been away off the Napa, it may be on the Grant but I hardly think so. The No. 2 East Fork claim overlapped the Napa, it took off about half of the Napa, that is what worried me.

Q. Yes, didn't it take off of the Nelson Bench too?

A. I suppose so.

Q. And didn't it extend west along the Nelson Bench?

A. It must have. (Continuing:) The south line of No. 2 East Fork was above the south line of the Napa. I never measured No. 2 East Fork, but I suppose it was 600 feet. I did not know Mrs. Elizabeth Carlson, now known as Mrs. C. J. Jorgensen. I have seen people at work several times on the Carlson

(Deposition of A. G. Kingsbury.)

claim during the time I have lived in that vicinity, during various years. There is a bank running along near the south line of the Grant claim above the line of willows. I never saw anyone working above this bank or north of the willows that I ever supposed was doing assessment work on the Carlson claim. After 1903 I took no notice about where they were working so long as they were off the Napa. I did not know as much about the Nelson or Carlson claim as I did about the Grant. I had a casual interest in the Grant claim because of my former association in it and being a part owner in it.

Q. But you did observe last year that there was such a claim or that someone claimed such a claim as Bench No. 1 Moonlight?

A. Yes, but I did not have the name impressed on my mind.

Q. You know where the corners are, approximately, of that claim? A. I don't believe I do.
[251]

Q. Haven't they been pointed out to you recently?

A. In a general way, I could not go and show you—

Q. No, but you could show me the stakes of the Grant claim? A. You bet I could.

Q. You couldn't show me the Nelson stakes or the Carlson stakes?

A. No, not all of them. (Continuing:) I don't remember seeing any keystone drill in the immediate vicinity, except on No. 2 Moonlight when the Wild Goose were drilling there; there has been other drills but no keystone, that is the only place I remember

(Deposition of A. G. Kingsbury.)

seeing a keystone drill. I don't remember seeing any horses working there with scrapers. I don't know who owned the claim north of the Grant claim. I never saw McKay in that vicinity and if there were men under his employ working out there I would not know it, perhaps. I would not swear that there had been no drill holes sunk on any portion of what is called the Grant claim. There was a gasoline drill on that ground as late as 1907. It was operated by Sperry and Sam Waysman and associates; they had a lease on the ground.

Q. I ask you whether you will swear that from September 15, to October 1st, 1907, there were not ten holes sunk with a keystone drill to the depth of about thirty feet, in part of the Grant claim, what you call the Grant claim?

A. That was inside of two weeks and I saw no keystone drill in that neighborhood at any time. (Continuing:) Most likely I was doing assessment work during that time about seven miles from there on other property.

Q. What proportion of the time have you been absent from the Grant claim or the Napa claim each year during the time since you first knew the Grant claim? [252]

A. Oh, some of the time I have lived there pretty continually and then I would be out on other property. I have averaged from one to six months every year, I mean from the time I first built my cabin there in 1905.

Q. How long a time did you spend there between

(Deposition of A. G. Kingsbury.)

July, 1899, and the fall of 1902?

A. My time being there consisting in various visits to the Grant claim, and to the Napa after I acquired that. (Witness continuing:) I kept no cabin there but I have been in a tent on the Grant claim. The cabin on the Grant claim has been moved once or twice. It has been on different parts of the claim. I don't know whether it is occupying the place it was moved to from that point now or not. I don't know when it was built. I don't know positively that that is the same cabin that was first put on the central part of the claim up near the ditch. I suppose it is the same cabin that was there last year.

Q. Has it been in its present position for two years last past?

A. I would not think for two years but perhaps it has, I would not say it has not. (Continuing:) It is within the area in conflict at the present time; I think it was not before it was moved. I did not know Andrew Jensen.

Q. The first season you became acquainted with the ground, the Grant claim, did you go over the ground with the view of ascertaining if there were any cuts or marks of any kind visible on the surface of that claim?

A. Yes, I frequently went by that ground and over the ground. (Witness continuing:) I would not swear that there were no cuts. I do not remember a man by the name of Lewis Johnson. I may know a man by the name of Langstrom, but not by that name. [253] There were various other people

(Deposition of A. G. Kingsbury.)

occupying the Caribou cabin on No. 2 East Fork Moonlight, but I did not know their names. It seems to me there were some tents on No. 2 East Fork and No. 1 Bench in the earlier years, but I don't remember, don't identify any in my mind, any cabins. There were a great many willows on the Grant claim in and about the southwest corner of the Grant claim. The willows extended from the southwest corner of the Grant claim past the initial stake and along the west line of the Grant claim, from there they disappear and appear again, as I remember near the northwest corner. The Grant stakes were willow stakes; the center stake was a larger one, and there was a small willow not over an inch and a quarter at its largest end, and the next largest one was at the northwest corner, and the others were very small; they were less than an inch in diameter. The initial stake was hardly three feet tall, the northwest not quite so tall, and the rest about two feet. The natural growth of willows is from two to four feet high in that vicinity.

Q. Did you file an amended location of the Grant claim at one time? A. Yes.

Q. When was that?

A. I have forgotten the date.

Q. It was in October, 1902, was it not?

A. October, 1901.

Q. Did you place any stakes at that time?

A. Yes, I think there was—that was the time I placed the 2x4's. I remarked the stakes when I placed the 2x4's.

(Deposition of A. G. Kingsbury.)

Q. What was your object in filing the amended location? [254]

A. I don't know, it runs in my blood to do that.

Q. On the theory that the more times you stake the less others will jump?

A. Well, perhaps that is what prompted—

Q. You followed that custom?

A. I have done it a great many times.

Q. In your amended location you said the purpose of it was to take in new ground in that locality?

A. I suppose I was following some form that I thought an amended notice required. (Continued:) I have heard of the What's Left Fraction. I have not examined the stakes, I had them pointed out to me. Mr. McCumber pointed them out to me.

Q. You advertised your copartners out at one time? A. Yes, sir.

Q. Who were your copartners, co-owners?

A. I can't tell you by name, except Grant, I don't remember.

Q. What interest did you have in the Grant claim at the time you advertised the co-owners out?

A. My stock in the Pacific Coal & Transportation Co.

Q. And what interest did the Pacific Coal & Transportation Company have in the Grant claim at the time you advertised the co-owners out?

A. They were the owners.

Q. What undivided part?

A. Half or fifty-one one-hundredths.

Q. And there were other copartners, other owners

(Deposition of A. G. Kingsbury.)

besides Grant? A. Yes, sir.

Q. What did you pay for the undivided one-half of the Grant claim? [255]

A. One thousand dollars. (Continuing:) That was paid in the month of March, 1900. We advertised them out in 1902. The company took the matter up and corresponded with the co-owners. They did it under my advisement. I notified the company to get after them for their share of the work. I think Albert Merrill has the correspondence. He lives in Manchester, N. H., now. Miss E. L. Howard succeeded me as agent; she had charge of the property until the following summer, 1903, and then Captain West took charge of it under the advice of W. H. Bard. Mr. Bard was afterwards agent of the company and issued leases. I had no conversation with Mr. Bard about whether he was told to quit work on the Grant claim by any one or not. I have never heard of anyone that was working on the Grant claim having been told to quit by any claimant of the ground.

Q. Are you very sure that you never heard anyone claim any portion of the Grant claim by reason of an overlap and a prior location?

A. Not of any of the people who own anything around there now.

Q. Anyone representing the Pioneer Mining Company? A. No.

Q. Anyone representing D. W. McKay?

A. No.

Q. Anyone representing Andrew Jensen?

(Deposition of A. G. Kingsbury.)

A. No. [256]

Redirect Examination.

(By Mr. GILMORE.)

Q. Counsel asked you about a cabin on the Grant claim that is out there now, with reference to its position, Mr. Kingsbury; you don't know whether the cabin that is there now was the cabin that stood further up on the claim or not?

A. I don't know, no, sir. It didn't look to me like the same cabin, perhaps it is.

Q. You don't know that it is a fact that this red cabin that is now on the Grant claim was hauled from the town of Nome two years ago and has never been moved, you would not swear that is not so?

A. I would not swear either way. (Continuing:) I was giving my best recollection, I have never been told anything about it.

Q. Now, with reference to the so-called Caribou claim, did you as owner of the Napa claim ever have any litigation over the Napa?

A. With the Caribou Mining Company, who owned No. 2 East Fork Moonlight.

Q. And who is the owner of the Caribou now?

A. Pioneer Mining Company.

Q. With whom did you settle your differences in the litigation?

A. Jafet Lindeberg. (Continuing:) I got a deed from the Pioneer Mining Company or Jafet Lindeberg, to the ground in controversy.

Q. Now, do you know where Mrs. Carlson-Jorgensen's claim was at the time of this Napa Caribou

(Deposition of A. G. Kingsbury.)

lawsuit? A. I know where she claimed it. [257]

Q. State whether or not it was surveyed and so marked to show that the Carlson claim covered the identical ground with the Napa, at the lower end, was it so marked by surveyor Gibson, if you know?

A. I have seen a map showing that.

Q. And where was the south end of the so-called Carlson claim with reference to your stakes?

A. Our corner stakes were identical lapping the Carlson diagonally across my south end.

Q. Do you know when the Carlson claim so-called was claimed to be in its present form as claimed by the plaintiff in this lawsuit, lying to the west of your Napa claim on the ground?

A. I don't remember when I first saw the notice on the southwest corner of the Napa to that effect, but I should think it was about two years ago.

Q. Was that before or since Jafet Lindeberg gave you a deed to the conflict? A. Since.

Q. Did Mrs. Carlson or Jorgensen, whatever her name is, ever claim that her claim lay west of this, at any time prior to the time Mr. Lindeberg gave you the deed?

Mr. LOMEN.—Objected to as calling for conclusion of the witness.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I never heard the word "Nelson" in connection with any of the overlaps of the Napa. P. D. Winter [258] might have been

(Deposition of A. G. Kingsbury.)

in possession of the ground west of the Napa toward what is called Moonlight Creek, but I don't know who mined on the Winter Fraction. I expect the Pioneer Mining Company owns all those fractions now.

Q. Do you know who owns the Jerome Fraction?

A. I am not positive, I suppose the Pioneer.

Q. Who owns the Carlson location, if you know?

A. I saw in the paper that the Pioneer Co. did.

Q. Who owns the Napa now? A. The Pioneer.

Q. You sold that to the Pioneer? A. Yes.

Q. When? A. This fall.

Q. State whether or not you staked a water right on the Grant claim at any time while you were in charge of the Grant claim, or interested in it.

A. Yes. (Continuing:) I staked one in the earlier years I could not say just when. I think I recorded it in the recorder's office of the Nome Recording office. I staked it in the lower part thinking I could take up the Moonlight Spring water in the channel that runs under the slide from Anvil mountain.

Mr. GILMORE.—I now offer in evidence, if the Court please, a certified copy of the water right mentioned by the witness in his evidence for the purpose of describing the boundaries of the claim with reference to natural objects in that vicinity, and for the purpose of showing possession of [259] the ground in controversy at the time, in the Pacific Coal & Transportation Company.

Mr. LOMEN.—Objected to as incompetent, irrele-

(Deposition of A. G. Kingsbury.)

vant and immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the clerk mark it for identification.

The COURT.—The exhibit may be marked Defendants' Exhibit 26 for Identification. Which said exhibit was in words and figures as follows:

[Defendants' Exhibit No. 26.]

#16825.

NOTICE OF LOCATION OF WATER RIGHT.

Nome, District of Alaska,

Sept. 2d, 1902.

I hereby claim for mininf mechanical and other useful purposes all the water within the limits of this Mining Claim known as "No. 1" bench on "Moonlight" upon which this notice is posted, both the surface water thereon and any water that has been heretofore discovered or that may be hereafter discovered in the gravel beneath the surface of the said claim,—

This claim was staked by W. N. Grant on January 9th 1899, by A. G. Kingsbury, Agent.

Filed for record 12:10 P. M., Sept. 17th, 1902.

Request of A. G. Kingsbury.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded in Vol. 71, page 162.) [260]

(Deposition of A. G. Kingsbury.)

Q. Do you know whether or not that water right was ever amended by anyone connected with the claim?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Lomen directed your attention to some stakes that stand a little north and east of the red cabin, and near the center of the Grant claim?

A. Yes.

Q. And you stated that there were several there several years ago, I believe you said in 1905?

A. Yes.

Q. State whether or not you saw any stakes there at that point in the year 1902, or prior to that, at that place.

A. I didn't see any. (Continuing:) The character of the surface of the ground where those stakes are now standing is open ground and no willows.

Q. State whether or not if there had been any stakes at that point, prior to the time of the Gibson survey in 1902 you would have observed them.

Q. I would have seen them. (Continuing:) In 1899, 1900, 1901, during my visits over the claim I do not remember of ever seeing any stakes at that point. I have recently seen what is called the Jensen claim. In 1899, 1900, 1901 and 1902 I was over that portion of the ground and I don't remember ever seeing any stake at that place, or any marking of any kind or character to indicate the corner of a claim

(Deposition of A. G. Kingsbury.)

there. From my observations in going across the claim at that point, if there had been a stake I should think I would have seen it. I knew [261] Sperry when he was living. He had a lease from the Pacific Coal & Transportation Company, in 1907 on the Grant claim. He drilled on the claim, I don't know how many holes. I think he started with a drill and then changed to another. I know L. F. Wood, a red-headed fellow. He was working there. I do not know Captain Anson by name. I do not know Mr. C. S. Johnson, by name. There was a fellow by the name of Sperry and a man by the name of Waysman working for Captain Sperry. Captain Sperry and his men were drilling there more or less through the winter. They drilled a good many holes, part of them within the ground in controversy. I know about where the Eagle Fraction is. Some of their stakes they placed within the ground in controversy. [262]

Recross-examination.

(By Mr. SCHOFIELD.)

Q. When you first saw the Grant claim, is it not a fact that it was staked with only two stakes?

A. No, sir.

Q. How many stakes marked the western boundary of the Grant claim?

A. Three. (Continuing:) The character of the surface of the ground at the westerly side of the claim is somewhat uneven on the south slope, the highest point there being the northwest corner. I have lined up the westerly stakes of the Grant claim.

(Deposition of A. G. Kingsbury.)

They were not in a straight line. The center stake stood up the hill out of line, perhaps six feet. I was a party to the lawsuit of the Caribou Mining Company against Howard and Kingsbury. I don't remember of ever meeting Elizabeth Carlson or knowing her.

Q. Isn't it a fact that you knew at that time that the southwest corner stake of the Napa claim was the southeast corner of the Carlson Bench?

A. I did not know it until I saw the notice posted on the southeast corner about two years ago. (Continuing:) The northwest corner of the Napa stands right on the ditch line. I became interested in the Napa in the fall of 1902. I did not know anything about the claims in that vicinity prior to that time, except as to the Grant claim. The first cabin that was put on the Grant claim was down close to the railroad, near where the railroad is, above the track.

Q. Now, this Bard and Muther cabin you speak of was a tent?

A. There was a cabin attached to it. There was a wood cabin there. [263]

Q. How long did that remain there?

A. I could not say.

Q. I want to know how long that cabin you call the Bard and Muther cabin remained there where you say it was situated?

A. It must have been two years.

Q. Do you know what became of it?

A. No, sir.

Q. Now, the next cabin that was placed upon the

(Deposition of A. G. Kingsbury.)

ground was placed at what point upon the Grant claim?

A. Halfway the length and towards the northerly side. (Witness continuing:) I don't think that cabin was within the ground in controversy, I think it stood a couple of hundred feet north of the Caribou claim. There was another cabin put on, or the same one moved down, but I think it was another moved on.

Q. Do you know who placed the cabin at that point, north and west of the Carlson Bench?

A. I suppose it was Mr. McCumber.

Q. Now, will you please draw in with a lead pencil, the east side line and the west side line of the so-called Carlson location as claimed on the ground at that time by Mrs. Carlson-Jorgensen during the lawsuit entitled Caribou Mining Co. v. Kingsbury and Howard?

Mr. SCHOFIELD.—Objected to as incompetent, immaterial and irrelevant.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Draw it approximately, Mr. Kingsbury, as near as you can, showing where it was claimed at that time, the Carlson location as marked on the ground, and write the word "three" and draw a circle around it. [264]

A. Witness draws line.

Q. Now, please draw the west line of the Carlson location as claimed at that time, where the west

(Deposition of A. G. Kingsbury.)

boundary side line was, and mark it with the word "four" and draw a circle around it.

A. Witness draws and indicates as directed.

Q. Prior to the time you got your deed from the Pioneer Mining Company state whether or not the Carlson location was marked on the ground the south end, at the point H and G as shown on the map.

Mr. COCHRAN.—Objected to as incompetent and not binding on us.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We offer the plat identified by the witness in evidence, if the Court please.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 27, said exhibit being as follows: [265]

Ethel Luella Howard, a Witness for Defendants.

ETHEL LUELLA HOWARD, being first duly sworn, testified as follows:

My name is Ethel Luella Howard; I am known by my initials as E. L. Howard. I first came to the Nome District in 1899. I first came to Alaska in 1898. I know Mr. A. G. Kingsbury. I have known him since 1898. I know a claim in the Nome District called the Grant claim. My business in Nome has been mining and cooking. I own some mining claims in the vicinity of the Grant claim and have owned property in that vicinity since 1900. I own a bench claim off from Cooper Gulch, about one-third of a mile in distance from the Grant claim. I was first on the Grant claim in the early part of September, 1899. I was looking for a chance to locate some ground through the willows there. I am familiar with the claim as shown on the map, Defendants' Exhibit 11. In September, 1899, I passed down through the willows as shown on the map, between points 2—1 over on the west end of the Grant claim. I know where the Moonlight springs are. I first saw them in September, 1899. When crossing the ground then I saw three blazed willow stakes with the name of Grant on them. I did not know Mr. W. N. Grant. In the year 1900 I made several trips prospecting for a time through the summer. One of the three willow stakes that I speak of was near the center of the willows, very near to the springs. I did not stake any ground in that vicinity. I passed over the Grant claim two or three times in the summer of 1900. My

(Testimony of Ethel Luella Howard.)

own claim on the Cooper Gulch was northeasterly from there. I knew a company called the Corwin Trading Co. I also know the Pacific Coal & Transportation Company, I was in its employ and had charge of its property at one time. In the summer of 1901 I did cooking for the company. It had offices in [267] the east end of town down about a quarter of a mile east of the Standard Oil in the direction of Fort Davis. I was engaged in cooking there in the summer and fall of 1901. Mr. A. G. Kingsbury had charge of its mining and property. I recall Mr. Kingsbury making some stakes and preparing some notices with reference to the Grant claim in September or October, 1901. I saw him paint five stakes with black paint. He painted them in the warehouse but they were dried in the mess house. I saw them there. I do not know what kind of paint it was, it was black paint he used. He painted the figure on each stake, numbering 1, 2, 3, 4 and 5. He wrote out an amended location notice for the Grant claim at that time and I signed it as a witness. It was made out the 4th of October, 1901, I believe. I think I signed it in the office building over in the east end of Nome. The notice was made in duplicate. I signed two of them as witness.

Q. Just glance at this Exhibit No. 16, the amended notice of the Grant claim, and state, if you know, whether that is a copy of the one that you signed at that time, in October, 1901. Is that in substance a copy of what you signed at that time?

A. Yes, sir. (Continuing:) In the summer of

(Testimony of Ethel Luella Howard.)

1902 I did some prospecting and I did some cooking there.

Q. Miss Howard, so as to get it in the record and inform the Court, state whether or not you do prospecting work of your own, on your claims.

A. I do.

Q. I mean physical work of mining, digging and mining? A. Yes, sir.

Q. State whether or not you have done that character of work for a number of years. [268]

A. Yes, sir.

Q. Did you do any prospecting in the year 1902?

A. Yes, sir. (Continuing:) I prospected near Cooper Gulch and also Anvil Creek. I was out on the Grant claim in 1902 while doing work in that vicinity, about the latter part of July or first of August. At that time I saw the amended notice that I had signed as a witness, on the initial monument stake of the Grant claim. I noticed it several times that summer while passing to and from the springs for water. The notice was on the initial monument stake of the Grant claim. I knew a claim in that vicinity called the Moonlight or Lyng claim. This amended notice that I speak of was at the easterly end of the Lyng claim. Mr. Kingsbury went outside to the states in the fall and winter of 1902 and I was left in charge of the property of the Pacific Coal & Transportation Company. I had charge of the Grant claim that winter.

Q. Do you know of your own knowledge whether or not any work was done on the Grant claim during

(Testimony of Ethel Luella Howard.)

the winter of 1902 and spring of 1903?

A. Yes, sir.

Q. Who performed work on the claim?

A. Howard and Doverspike and their partners.

Q. Who was that Howard, was he any relation to you? A. No, sir.

Q. State whether or not they operated that winter under a written lease, if you know.

A. Yes, sir. (Continuing:) As near as I can remember, Howard and Doverspike worked on the Grant claim about the first of December, 1902, and worked continuously until the middle of May, 1903. I was out on the Grant claim during that time. They worked down through the willows. On the map, Exhibit 11, I [269] mark the place where they worked with the number "55." They were taking out a dump there and did some prospecting. I don't remember how many times I was on the claim there during the time they worked there. I was there a number of times, as near as I can remember it would be about once a week. There were four men all of the time, I think, working there, and I think they had five men part of the time, I am not sure. In the spring, about the middle of May, 1903, they commenced to sluice. They quit work on that ground on account of an injunction that was served on them by the Moonlight Springs Water Co. I heard Mr. Lindeberg's deposition read to the Court, stating that the dump that had been taken out by Howard and Doverspike was all sluiced up when he arrived in Nome in June, 1903. The dumps were not all of

(Testimony of Ethel Luella Howard.)

them sluiced up in June, 1903. They were washed up after the month of June, 1903, to my own knowledge. I know the value of labor per day during the winter of 1902 and spring of 1903, on the ground, the Grant claim, in the Nome District. The going rate of wages that winter was three to four dollars a day, I think, with board.

Q. Now, will you please state the approximate value of the work done by Messrs. Howard and Doverspike and their associate between the time they went to work in the fall of 1902 on the Grant claim, and the time they quit work in the month of May, 1903?

Mr. COCHRAN.—Object to the question on the ground that the witness has not shown herself qualified to answer the question.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [270]

(Witness continuing:) While I had charge of the Grant claim during the winter of 1902 and spring of 1903 I never heard of anyone making any claim to the Grant claim or any of the ground embraced within its boundaries.

Q. State whether or not the Pioneer Mining Company, or Andrew Jensen or D. W. McKay, or anyone on their behalf, made any claim whatsoever to any part of the ground embraced within the Grant claim during the time you had charge of it.

Mr. COCHRAN.—I object to the question being wholly irrelevant and immaterial.

(Testimony of Ethel Luella Howard.)

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness that while she was in charge of the claim, in authority, she visited it frequently; and that while on the claim during the winter as heretofore testified to by her, the Pioneer Mining Company were mining on adjoining ground in that vicinity and never at any time to her, or to anyone else, to her knowledge, did they make any claim or contention whatever that they owned the claim or the ground within the Grant stakes.

Mr. COCHRAN.—We object to the offer as being irrelevant and immaterial.

The COURT.—Your offer is not in accordance with your question.

Mr. COCHRAN.—I don't think your Honor should [271] pass upon the offer at this time.

The COURT.—I will not pass upon it at this time. I said the offer was not in accordance with the question. That has been ruled upon by the Court. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. I will ask you now, Miss Howard, do you know Andrew Jensen? A. No, sir.

Q. Do you know D. W. McKay? A. No, sir.

Q. Did you know the Pioneer Mining Company or any of its officials in the winter of 1902 and the spring and summer of 1903?

Mr. COCHRAN.—We object to that as being irrelevant and immaterial, whether she did or did not

(Testimony of Ethel Luella Howard.)

prior to the acquisition of the property.

Mr. GILMORE.—Unfortunately for the counsel on the other side, Mr. Lindeberg testified that he had an equitable title to it by virtue of written options.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) During the winter of 1902 and spring of 1903, while I was upon the Grant claim, I did not see anyone else upon the claim mining or working in any manner whatever other than Mr. Howard and Mr. Doverspike and their associates; and during that time I did not observe anyone on the [272] Grant claim other than those gentlemen, claiming possession or ownership of the claim, or the ground embraced within the Grant claim. I know a man by the name of Hopkins. I gave up the care and attention of the Grant claim for the Pacific Coal & Transportation Company about the first of July, 1903, and was succeeded by Mr. W. H. Bard and Captain West of the steamer "Corwin." I knew of a man by the name of J. C. Muther, but I was not acquainted with him. I knew Mr. Bard personally. I know of my own knowledge that work was done on the Grant claim in the summer and fall of 1903. I was upon the Grant claim in the fall of 1903. Mr. Hopkins and his partners were working on the Grant claim that fall, near the same place that I indicated where Howard and Doverspike worked. I know the ground in controversy in this lawsuit. The work done by Howard and Doverspike, and that

(Testimony of Ethel Luella Howard.)

done by Mr. Hopkins, was done within the ground in controversy. I knew where Mr. Hopkins lived while at work there. He lived in a cabin that the laymen on the Napa used to occupy while I was out there. I understood that Mr. Bard was interested with Hopkins. I crossed over the Grant claim in 1904 and 1905 but I never paid attention to the ground. When I was in charge of the claim in the winter of 1902 and spring of 1903, I observed the boundaries of the Grant claim. The boundaries were marked. The initial stake was a 2x4 marked 1, in a good-sized sod mound. I saw the stake marked No. 2 at the southwesterly corner; stake marked 5 at the northwesterly corner and stake marked 4 at the northeasterly corner, and stake marked No. 3 at the southerly corner. I recognized the stakes in 1902 as the stakes that Kingsbury painted at the office of the Company in October, 1901. The corner stakes were well mounded. The stakes at the point 2 and 5 on the map [273] were at the same place that I saw the willow stakes in September, 1899. I was on the Grant claim this past summer and at that time went up to the corners. The corners were in the same place where I observed them in the winter of 1902 and 3, and the easterly corners were in the same place that I observed a willow stake in September, 1899.

Q. Have you any interest whatever in the result of this lawsuit, Miss Howard?

A. I positively have no interest whatever.

Q. Have you any interest in the Pacific Coal &

(Testimony of Ethel Luella Howard.)

Transportation Company?

A. I positively have none. (Continuing:) While I was out there this summer I saw a red cabin on the ground.

Q. Now, on the ground, a little northeast of the red cabin, at a point shown as point 9 on Exhibit 11, did you observe this summer some stakes at that point? A. Yes, sir.

Q. When was the first time you saw any stakes at that point on the Grant claim?

A. The latter part of October, 1902, when I had charge of that property.

Q. And state whether or not you had passed by that point in the years prior to 1902?

A. During the seasons when I was at the camp out there, a great many times, passing up and down to the springs for water. (Continuing:) The character of the ground in that vicinity, at point 9, is high ground above the willows and in the open without any willows, and that point on the ground can be plainly seen from other portions of the claim.

Q. Did you ever prior to October, 1902, see any stakes on the [274] Grant claim in that vicinity?

A. No.

Cross-examination by Mr. SCHOFIELD.

The first time I passed over the claim I didn't examine it specially for stakes at that point, but I passed within a few feet of where they are now standing. I first examined the stakes at that point on the 24th of September this year. That was not the first time that I saw them. The first time I saw

(Testimony of Ethel Luella Howard.)

the stakes at that point was in the latter part of October, 1902, when I had charge of the property.

Q. The stakes were there in October, 1902, marking the northwest corner of the Carlson claim?

A. No, there wasn't any stakes there that I could see said what claim it was. (Continuing:) The first time I ever saw any stakes at that point, was the latter part of October, 1902. There were three stakes then. I think they were in the same mound. I did not see a stake at that point that was five or six feet northwesterly from the other stakes, at that time. As near as I remember there were two that I saw that I should think would be 2x4 lumber stakes, and one a little smaller, I should think about 2x3 lumber. I did not see any willow stakes there. I could not swear positively that there was not any. I did not observe a little hole there at that time, with a little mound thrown up. I didn't notice any if there was one. I have been over there a great many times for water, when I camped there different years since 1902. I have examined the stakes at point 9 this summer. There are two of them there now that I thought were the same that I saw in October, 1902. I remember seeing a stake there that I took to be a surveyor's stake, with some marking, but I couldn't tell [275] from the marking whose stakes they were, the name M. B. was cut in the stake, and that stake is still standing as I saw it in October, 1902. I did not ascertain in 1902 that that stake was the northeast corner of the Moonlight Bench No. 1. When I first went out there in September, 1899, I

(Testimony of Ethel Luella Howard.)

was looking for ground to locate. I examined part of that vicinity carefully as to whether or not the ground was open at that time. I thought the ground had all been staked in that vicinity from the number of stakes that I saw. I did not find any likely ground in that vicinity that was open for placer locations and I did not make any location there. It is about a third of a mile from the Grant claim to my claim on Cooper. Where I go to on Cooper Gulch is somewhat higher up than the Grant claim. My only object in going to the ground in the vicinity of Moonlight Springs in September, 1899, was to ascertain whether or not there was any open ground in that vicinity. I looked at a great many stakes in that vicinity at that time. I entered that vicinity from the lower tundra there and happened to go over near those springs, as I entered the willows I came down to that water there, and that stake of the Grant claim. I didn't go much distance above the willows there, either above or below, about the same distance. I didn't think much of the ground there above the willows or below.

I recall the break-off in the bank that runs across that country. I went past there looking for stakes. I went some distance above the thickest part of the willows. I noticed the open ground above the willows. I looked at all the stakes through that entire vicinity immediately south of that break or jump off. I examined all the stakes that I saw.

I first knew Mr. Kingsbury in 1898. I met him

(Testimony of Ethel Luella Howard.)

on the boat coming to Alaska. [276]

The first mining that I did here at Nome was on the beach.

I didn't know that part of the Howard and Doverspike dump fell back into the shaft. There were several dumps taken out by them that winter. I don't recall if some of those dumps fell back into the shafts after the breakup that spring, or not.

I examined the three stakes that I saw in September, 1899, on the Grant claim at the time I was out there. They were the only ones I saw at that time. [277]

Mr. GILMORE.—I next offer in evidence the deposition of Robert Lyng, taken on the 19th day of September, 1911. He did not leave for the outside as soon as he expected to, and he was subsequently examined October 25, 1911, recalled on that date.

Deposition of Robert Lyng.

My name is Robert Lyng. I am forty years old and have been lately in the mining business up here. My home is in Nome; I reside when outside in San Francisco; that is my legal residence, however. I intend to leave for the outside this fall on the next trip of the steamer "Senator," this coming week. I first came to Nome in the fall of 1898, in November, I think, somewhere about the 20th or 21st of November. I might miss it one day or two at that. I came here from Golovin Bay. After arriving here I made some mining location in the vicinity of Anvil mountain. I located what I called the Moonlight claim,

(Deposition of Robert Lyng.)

near Anvil mountain. It was several days after I arrived. I don't know just how many days now, several days after. Eric Lindbloom and R. T. Lyng were with me when I staked and located the claim. R. T. Lyng is my brother. He is still living. Mr. Lindbloom is one of the organizers of the Pioneer Mining Co. There was no one else in sight of us at that time in that vicinity, as far as I can remember. I cannot recall the exact date now, it was around the last days of November, 1898. The Moonlight claim covered what is called the Moonlight Springs out there. That is, I staked to the upper end of the claim above the springs and staked down so as to take in the springs or the biggest part of them, at least, and down along the stream. Down along what is called Moonlight creek. Mr. Lindbloom staked a placer claim the same day. He staked the claim just [278] below mine and he called it No. 2 Below on Moonlight. I called my claim the Moonlight claim. Lindbloom's claim adjoined mine on the lower end, that is, on the downstream. That is the southwest end. I have not been out in that vicinity recently. The last time I was out there was a good many years ago. I have not been out there, that is I have not stopped in that vicinity for a good many years. I have been going across there on the train but never stopped there in six or seven years. I know where the Moonlight Water Company gets its supply of water, where its intake is, it is from the Moonlight Springs. The springs where the Moonlight Water Company gets its water

(Deposition of Robert Lyng.)

is on the claim that I located in November, 1898. My claim as I located it, covered a large part of that spring.

Q. Where was your upper end, or east end of your claim with reference to those springs where the Moonlight Company now gets its water?

A. It was above the springs, that is, it was to the east of the springs, to the northeast, I guess, it would be.

Q. How did you mark your boundaries at that time, in November, 1898?

A. I put up four corner stakes and center stake at the upper end and center stake at the lower end. (Continuing:) I put the name of the claim and date of location and my name on the stakes that identified the claim. I called the claim the Moonlight claim, and my name was given as locator. Also the date of the location. The date given was the date that we located the claim in November. The monuments and stakes that we erected at that time were plainly visible in that locality. The stakes were driven in the ground and mounds built up around the base of the stakes so as to hold them up. We could not [279] drive them in very far because the ground was frozen. We had a pick and shovel to do that with, but could not drive them in as far as we would have done, so piled up little mounds at the base of the stakes to hold them up. The initial stake was at the upper center end, that would be the east end center, the end towards Anvil mountain. The initial stake was a willow stake and marked as I have said

(Deposition of Robert Lyng.)

already with location notice. I mounded that monument up with sod mound, cut the sod and threw it up around the stake. I have not been to that stake in recent years. As near as I can recall it is seven or eight years, I guess, at least since I have been there. I prospected on this claim. I prospected a little before I located it. I discovered gold within the boundaries of the claim as marked by me at that time. I found fine gold and found sufficient indications of gold at that time to warrant me in holding the claim and further develop it.

I know a man by the name of Andrew Jensen; that is, I know a man by the name of Jensen. I am not sure whether his name was Andrew or not. He had a claim near mine. I met him after I located there, several months. I know a claim out there called the McKay Bench, also called No. 6 Good Luck. That claim was located close to the Moonlight claim. It was on the north side or west side, I suppose, it would be. It would be between my claim and Anvil Creek. I knew a man by the name of W. N. Grant. I got acquainted with him during the winter of 1898 and 9. I knew him in the fall of 1898 down at Golovin Bay, that was before I located my Moonlight claim.

Q. Do you know whether or not he had a claim, or staked a claim out in the vicinity of yours that winter? A. Yes, he did. [280]

Q. Where was his claim with reference to yours?

A. East of mine.

Q. Do you know where his initial stake was?

A. Yes, sir.

Q. Where was it with reference to yours?

(Deposition of Robert Lyng.)

A. It was identical with mine.

Q. In the same mound, the mound that you had erected? A. Yes.

Q. And what character of a stake did he have at that point at his initial stake.

A. He had the same kind of a stake, willow. (Continuing:) I never examined it closely and never looked for any marks on it. I don't know of my own knowledge whether there was any marks on it or not. I was next on my Moonlight claim after I made my location in November, the following spring. I think it was in the month of May. It may have been June before I went out there. It was either May or June. I don't recall that I observed any notice of any kind or character on the stakes in the mound that I had erected.

Mr. GILMORE.—I offer in evidence a certified copy of the location notice of Bob Lyng's Moonlight claim, it being the claim that our Grant claim ties to; also the filing marks on it showing the date of record in the recording office.

The COURT.—It may be received in evidence, with the filing marks, and marked Defendants' Exhibit 29; which said exhibit is as follows: [281]

Defendants' Exhibit No. 29.

NOTICE OF PLACER LOCATION.

Notice is hereby given that the undersigned, having complied with the Mining Laws of the United States of America, and the local laws and customs of the Territory of Alaska and of the Cape Nome Mining District, having this 28th day of November, 1898,

located and do hereby locate and claim all of ground within the boundary hereinafter described, for placer mining purposes, together with all water rights, timber rights, rights of way and all other rights and privileges thereunto pertaining.

This claim is located on Moonlight Creek in the Cape Nome Mining District, and its boundaries are particularly described as follows, to-wit:

Commencing at the initial stake monument, whereon this notice is posted; thence south 330 feet to a stake monument being the southwest corner of the claim; thence east 1320 feet to a stake monument being the southeast corner of the claim; thence north 660 feet to a stake monument being the northeast corner of the claim; thence west 1320 feet to a stake monument being the northwest corner of the claim; thence south 330 feet to the initial stake monument or place of beginning.

This claim shall be known as the MOONLIGHT.

Located by:

ROBT. LYG.

Witnessed by:

ERIC O. LINDBLOM.

R. T. LYG.

Filed for record 9:00 A. M., December 5, 1898.

P. H. ANDERSON,

Deputy Recorder.

(Recorded Vol. 1, page 128.) [282]

Mr. GILMORE.—I also offer certified copy of location certificate of No. 6 Bench Anvil, or McKay Bench, referred to by this witness as No. 6 Below Good Luck; also the filing marks showing the record.

The COURT.—It may be received in evidence with

(Deposition of Robert Lyng.)

the filing marks, and marked Defendants' Exhibit 30; which said exhibit is as follows:

Defendants' Exhibit No. 30.

Anvil Creek, Jan. 2nd, 1899, Cape Nome Min. Dist.

BENCH CLAIM NO. 6.

I the undersigned Claim 660 feet from this stake northerly running parallel with claim No. 1 below southern side of Anvil Creek thence easterly 1320 feet thence southerly to Moonlight Claim thence along Moonlight Claim to stake No. 2 thence westerly to point of beginning.

ANDREW JENSEN,
Locator.

Witnesses:

OTTO SCHUELER.

E. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17th, 1899.

G. W. PRICE,
Dept.

(Recorded Vol. 3, page 64.)

(Witness continuing:) In May or June, 1899, I went out to my southeast corner stake and examined that point. I don't recall whether I observed any other stake there at that time than my own, or not. I had a mound at that point around my stake. [283]

Q. Where did you see Mr. Grant after you made your location? A. I saw him several places.

Q. State whether or not you ever saw him on the claim or in the vicinity of Moonlight claim.

A. I have.

(Deposition of Robert Lyng.)

Q. State whether or not you were ever on his claim, or what he claimed to be his claim, at that time.

A. I was.

Q. And where did his claim lie with reference to yours at that time?

A. It was—it extended from my upper end in an easterly or northeasterly direction. (Continuing:) I was out on the claim several times during the summer of 1899. I can't say that I made an examination of the ground, stakes and monuments in that vicinity only my own claim. My best recollection is that Mr. Grant and I were on my claim and his claim in that vicinity during the summer of 1899.

Q. How well were you acquainted with Jensen—were you on speaking terms? A. I was.

Q. Did you ever see him on his claim out there?

A. I did.

Q. Where did you see him?

A. He was camped and at work on his own claim adjoining the Moonlight.

Q. What part of that No. 6 Good Luck do you remember Mr. Jensen had his camp on?

A. I don't recollect just what part that was, it was on the part up towards Anvil Mountain, I think.
[284]

Q. That would be the upper end of his claim?

A. I think so.

Q. About what distance from the springs was he camped? A. Not very far.

Q. What was he doing, if anything, there?

A. Prospecting.

(Deposition of Robert Lyng.)

Q. Did you hold any conversation with him at that time with reference to the ground in that vicinity?

A. Yes, I did.

Q. Was he out there at the time you and Mr. Grant were there in the summer of 1899? A. Yes.

Q. Do you remember whether or not he was on his claim the day that you and Grant were there?

A. Yes, I think he was camped up there.

Q. Now, do you know of a claim called No. 1 Bench Moonlight, did you ever hear of such a claim?

A. Yes, I think I have.

Q. When did you first hear of that claim, Bob?

A. I don't know, it might be several years since.

Q. Did you know anything about it in 1899?

A. No, I did not.

Q. Did you ever see any stakes or monuments of any kind or character indicating where that claim was? A. I did not.

Q. At any time in your life?

A. Not that I can recall.

Q. Do you know anything of your own knowledge, Bob, about where that claim was located, if such a claim was located or marked on the ground?

A. No, I don't. [285]

(Witness continuing:) When I was out there in May or June, 1899, I visited all my stakes that I put up in November, 1899. I found my stakes standing as far as I can now remember. I didn't look for any other stakes than my own and I don't recall having seen any other stakes in May or June, 1899. The only claim in that vicinity that conflicted in any

(Deposition of Robert Lyng.)

way with my Moonlight springs claim was what is called No. 6 Good Luck, the one that Jensen was camped on in the summer of 1899. He claimed that the northeast corner of my claim had been moved over on his ground. He said that the northeast corner of my Moonlight claim had been moved over onto his No. 6 Good Luck.

Q. Was there any other claim in that vicinity that you know of that conflicted with your location, your Moonlight location?

A. None that I know of; no. (Continuing:) I don't remember when I parted with my title to the Moonlight claim, to my best recollection it was either in 1901 or 2. I sold out to the Pioneer Mining Company.

Q. Now, from the time that you located in 1899, up to 1901 or 2, whatever time you sold to the Pioneer Mining Company, did anyone ever make any claim of any kind or character to your claim or any portion other than this claim made by Jensen to the overlap of No. 6 Good Luck?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the answer of the witness that he answered in substance that [286] no one made any claim whatever to it, thereby including the Pioneer Mining Company or any of its officials or its predecessors.

(Deposition of Robert Lyng.)

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did anyone ever assert that they had a claim conflicting with yours up to the time you sold?

Mr. COCHRAN.—Objected to as being wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness' answer in substance that no one made any claim to his knowledge, of the ground, including the plaintiff and its predecessors.

Mr. COCHRAN.—We object to it on the ground that it is wholly irrelevant and immaterial.

The COURT.—The objection is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did anyone make the assertion to you that they conflicted with you in any way?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained and exception allowed. [287]

Mr. GILMORE.—We offer to show that the witness in answer stated in substance that no one ever did, thereby including the plaintiff and its predecessors.

(Deposition of Robert Lyng.)

Mr. COCHRAN.—I object to the offer on the ground that it is wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Lyng, I hand you here a map, being a survey of a portion of the Moonlight claim and the Grant claim, made by Arthur Gibson, on the 30th day of September, 1902. Just please examine it a minute. I direct your attention to the point on the map marked Stake 1 on the easterly end of what is called the Moonlight claim. Please state if that was your initial stake, as erected by you in November, 1898; please indicate about where the springs would be on the claim, as shown on the map?

A. It would be about here.

Q. Will you please draw a line across where the springs would be on the map, this being east up here and this being west according to the map?

A. Well, that would come in like this (indicating), something like this here; it may be a little further down, possibly.

Q. Now, so as to get it in the record, will you mark that line X in the middle of the line, and what is your recollection Bob of the distance from the springs to the initial stake, at the time you marked it on the ground? [288]

A. From my initial stake to the springs?

Q. Yes, your best recollection now of the distance it would be?

A. It would be possibly 150 feet. (Continuing:)

(Deposition of Robert Lyng.)

I placed three stakes at the east end of my claim in 1898 when I staked it, one stake at each corner and one center stake.

Q. Now, I direct your attention here to the Grant claim as shown on the map by the surveyor, at the point marked stake 2 and stake 5, and ask you to state, Mr. Lyng, whether or not at the time you staked the Moonlight claim in November, 1898, you ever staked or marked the east end of your claim running from your initial stake to point 5 and back to the point which I will mark "Y," when marking the end of your claim?

Mr. COCHRAN.—We object to that on the ground that there is absolutely no evidence upon which to base such a question.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you ever incorporate the ground, at the time you marked the ground in 1898 from the points 1-5 and Y in your claim?

Mr. COCHRAN.—Objected to on the same ground as stated in the objection to the preceding question.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [289]

Mr. GILMORE.—I ask the Court to have the map attached to Mr. Lyng's deposition marked for identification.

The COURT.—It may be marked Defendants' Exhibit 31 for Identification.

(Deposition of Robert Lyng.)

Q. Did you ever move or change the position of your initial stake from the time you placed it there in November, 1898, at any time when you owned the claim?

A. I did not. (Continuing:) I never moved any of my stakes. So far as I know the stakes were in their proper position when I sold to the Pioneer Mining Company. I do not recall the exact date when I sold. I did not employ Mr. Gibson to make this map. I do not think I was out on the ground at the time the Pioneer bought the ground. I do not recall whether or not I ever observed Mr. Grant working on his claim during 1899 nor do I recall whether or not I observed any work done by him. I have no interest whatever in the result of this lawsuit. I have no contingent payments and I have parted with my title to the Moonlight claim.

Cross-examination.

(By Mr. COCHRAN.)

I have been in the vicinity of the Moonlight claim, or on the Grant claim, before I located it. I could not swear that I had been within the boundaries of the claim before, but I possibly had because I was back and forth several times before I located the claim. I think I named Moonlight Creek on the day I located the Moonlight claim. I think I originated the name of Moonlight and also the name of the springs.

I tried to make my end lines straight when I located. [290] As far as I know, it was a straight line. There were more or less willows at that point

(Deposition of Robert Lyng.)

and it is up hill; in places the willows are too thick to get through and I might have got a little out of straight line in that way, but I tried to make the end lines as well as the side lines straight.

Q. Now, there is nothing up there to obstruct your view from one point to the other?

A. Yes, there was right there.

Q. What was it?

A. Well, there was willows and there was quite a bank up there, between the corner stake on the north and the center stake and the other corner stakes, so that the bank that is there, there is a drop off there and the center stake is up here (indicating), and I would be up on the opposite side of the bank, and I could, possibly, not see the stakes.

(Witness continuing:) As far as I recollect I put some mounds around the center end stakes the day I located the claim. I think we put the corner stakes in the next day, either the same day or the next day. There was only little patches of snow here and there on top of the ground and the top of the ground was frozen. The mounds were principally moss, and we had cut loose some frozen stuff. We had an ax and pick and shovel along. It did not take us very long, possibly an hour or an hour and a half; I should say an hour and a half. We cut the stakes right there and wrote out the location notice there on the ground. I believe we did some prospecting that day. I could not swear now whether I did or not on that day. I believe we had a pan with us. I am not sure whether we had or not. We prospected in the creek where

(Deposition of Robert Lyng.)

the spring is running, [291] where the water is running right near the springs where the gravels are exposed in several places. I am not positive whether I did any prospecting the first time I was there or not. I was on the ground a day or two later; my brother was with me and possibly another man. I am not sure whether anyone was with me besides my brother or not. I was on the trail traveling at that time. I wasn't living anywhere. Living wherever I stopped at night. I had a camp on Anvil Creek, on No. 7 Above Anvil.

Q. And you were on the trail traveling back and forth between there and Nome?

A. I thought you meant the next time I went on the Moonlight claim. When I made my location was when I was on the claim, I broke camp that day and went back to Golovin.

(Witness continuing:) I had sent part of my equipment back already and I took the rest along. I was traveling with reindeer belonging to my brother's outfit. I had sent most of my outfit back with a dog team, I run out of dog feed and had to send the team back and I don't recollect whether I sent my tent or not. As far as I remember the chances are we left our tools and everything packed up at that time, at Anvil or the Beach. We stopped down at the Beach, I don't know whether we stayed over night or not. I don't recollect that we were to do any prospecting along the way. We passed through the Moonlight claim. We stopped and did some work there.

Q. Now, what did the work consist of Bob?

(Deposition of Robert Lyng.)

A. That answer may not have been correct. I would state that we stopped there and I think we staked another claim on that day, and possibly put up the corner stakes, I am not sure whether we did or not. We staked a claim [292] called the Lindblom claim south of the Moonlight claim. I don't recollect whether we did any work on the Moonlight claim or not that day. We were headed for Golovin. We went to several other places before we went there, for instance we staked some more claims in this country. We staked six or eight more claims. I don't think I returned to Nome until May or June, 1899. I did not leave anyone in charge of the claim when I was gone, nor anyone to do any work for me. When I returned in May or June, 1899, I did some work on the claim and discovered gold up in the corner where the springs are. My initial stake was the upper end of Moonlight claim, and the claim extended down the stream. My main object was not to include the springs. We included the springs. There was water running in there, I think, that was within the claim, water coming in from both sides, a little. We staked down the stream from the initial stake. My intention was to stake 1320 feet downstream from the initial stake and 330 feet on each side. As far as I know, we staked off the claim 660 feet by 1320 feet in form of a parallelogram; that was my intention. I had staked quite a number of claims prior to staking the Moonlight, or assisted in staking quite a number of claims, and stepped them off generally. I never tried to be reasonably ac-

(Deposition of Robert Lyng.)

curate, but I tried to be as near as I could, in stepping off the claims. I located this claim as near as I could in the form of a parallelogram, 660 feet wide by 1320 feet long, that was my intention, and I think I stepped it off. In stepping off I counted it off. I tried to step three feet to a pace. I never taped the ground off at that time. I don't recollect whether we set the initial stake or put up the corners first I tried to pace 330 feet each way from the initial stake. It would take 110 paces for 330 feet. [293] I do not think I was present when Grant made a location in that vicinity. I do not know whether I was in Golovin or not at that time. I made several trips out to St. Michaels and two or three up here to Nome. I don't think I saw him make any location up there.

Q. Now, you say Grant's initial stake was identical with your initial stake? A. Yes.

Q. You mean by that that you saw his stake there in the mound where your initial stake was?

A. Yes.

Q. I believe you said you did not recollect of ever seeing any markings upon that stake.

A. No, I never looked for any.

Q. Now, someone told you that was Grant's stake did they, or did you just conclude that was Grant's stake because Grant had a claim there?

A. Grant told me himself. (Continuing:) I don't recall that I ever observed any other stakes at my upper corner.

Q. And did the Grant claim overlap your claim?

(Deposition of Robert Lyng.)

A. No.

Q. How do you know if you never saw his corner stake?

A. Well, I am answering to the best of my knowledge.

Q. Then, you don't know whether it did or not, Bob?

A. So far as I know it didn't, I know his center stake was not inside of my lines. (Continuing:) I am not sure whether or not he claimed his corners where mine were or not. I don't think I know a man by the name of Nelson who made a location near Moonlight claim. I may know him. I don't know whether I do or not. [294]

Q. Do you know a claim called the Nelson Bench claim? A. No.

Q. Are you familiar with the ground lying east of the Moonlight claim?

A. Familiar with the ground but not the location. (Continuing:) I never heard of the Napa claim or Depue claim until I saw it on this map. I don't know what they call the claim that lies between the Napa and the Moonlight. I know a man by the name of Spanggard. I think I knew him in the winter of 1898 and 9 in Nome. I did not know he located a claim in that vicinity called the Depue or Napa Bench. Never heard of it. I don't recollect that I ever saw him up in that vicinity. I know Elizabeth Carlson, now Mrs. Jorgensen. I have known her up there for several years. I never saw her in the vicinity of the ground lying immediately easterly of the

(Deposition of Robert Lyng.)

Moonlight claim. I do not know a great deal about the locations in the vicinity of the Moonlight claim after I made my location. I did not examine the stakes and I was not interested in the ground lying outside of the Moonlight claim to the easterly. I cannot say I ever paid any attention to the stakes except those in my own vicinity. I don't know how many claims might have been located between Moonlight claim and the Napa. I only know where the upper end stakes or northerly end stakes of the Grant claim are in a general way. I can't say whether I have been to them or not, only in a general way. I know the general direction of his claim as he told me he had located it. I could not point out the spot where the stakes were located. [295]

Redirect Examination.

(By Mr. GILMORE.)

Q. Where did Grant tell you the claim was located?

A. He told me it was located from my upper end line, extending the other way.

Q. By other way what do you mean?

A. That would be in an easterly direction.

Q. And then, if your claim is correctly marked on this map, does the Grant claim there show about where he indicated to you it was? A. It does.

Q. Where were you when you had the conversation with him with reference to his claim? I mean which claim were you on, yours or his? A. I don't know.

Q. State whether or not at that time he indicated by pointing, the direction of his claim, which way it lay. A. Yes, sir.

(Deposition of Robert Lyng.)

Q. Where did he indicate his claim from with reference to yours?

A. Extending to the east from mine. (Continuing:) We then were in sight of his claim at the time he indicated. We were either on his ground or on Jensen's No. 6 Good Luck.

I am acquainted with Jafet Lindeberg. I was on the Moonlight claim with him in 1899 during the summer. I think it was in July or August, 1899, that we were there. I was there prospecting with him. We prospected near the Moonlight springs. We found some gold then. I found it on several occasions.

My initial stake at the time I placed it on the ground with reference to the Moonlight springs, was on higher ground than the springs. It was on lower ground than the northeast corner. [296] It was uphill from the initial stake going towards the northeast corner of my claim; as near as I remember, it was fairly level or just slightly uphill for a short distance from the initial stake and then there was a pretty steep bank several feet high, possibly eight or ten feet high, and then it was more level again from there, that is slightly uphill. The abrupt rise that I spoke of is not so very far, as near as I can remember it is about twenty or twenty-five feet. I indicate by letter "O" on the map where the hill is. From the initial stake to the southeast corner it was going downhill; there was more or less willows there at that time, pretty thick bunches of willows.

Q. Now, Mr. Lyng, you say you stepped off the

(Deposition of Robert Lyng.)

claim from the upper end down what you supposed was 1320 feet in length? A. Yes.

Q. Do you know whether or not you got 1320 feet in length?

A. No, I don't. (Continuing:) I never ascertained afterwards whether or not it was a full length claim. Lindblom's claim was staked below mine. His initial stake, that would be the upper center end stake, was identical with my lower center stake. Moonlight claim ran through his claim as well as mine. There was a surface stream running there then, before the ground was disturbed by mining. I don't know where Moonlight Creek emptied into.

In answering Mr. Cochran's questions when I said I did not know of a claim lying between the Moonlight and the Napa, I did not refer to the Grant claim.
[297]

Recross-examination.

I sold my Moonlight claim to the Pioneer Mining Company and got a thousand dollars for my interest, which was one-third. I know Mr. McCumber, one of the defendants in this case, by sight. I don't know that I designated my lines as shown on the map or not. My judgment is, if I did, I did not get a very straight line. I may have placed a stake wrong. I did not step off all the lines. There were three of us and one would step one way and one another. I am familiar with the lines of the Moonlight claim in a general way. Been out there a number of times. I don't recollect whether I ever observed that there was any discrepancy in my northerly end line or not.

(Deposition of Robert Lyng.)

I had a talk with Jensen about the overlapping of his No. 6 Good Luck. All the talk we had about that was Jensen told me that one of his stakes was over on his ground. When we had the talk we were either on Jensen's claim or on the Moonlight claim. Jensen showed me the stake. I believe it was on his No. 6 Good Luck. I do not know where the corner of the Good Luck is. I don't know whether I put my stake at the point marked XX on the map or not. I think my stake was marked. According to the map the northeast corner is only 200 feet from the initial stake that would make it not a full-sized claim; it would be a short claim. I am five feet eight or nine inches high. I think I can pace three feet. I don't know whether I paced that line off or somebody else did. I paced some of the lines. The other two paced off some of the others. The willow stakes look pretty much all alike.

Q. Did you or did you not know your stakes?

A. I think I did.

Q. But you don't know the corner stakes that Jensen showed you on the Good Luck claim?

A. I think I do. [298]

Q. Was it your corner stake? A. I think so.

Redirect Examination.

(By Mr. GILMORE.)

I know it was Davidson that surveyed the Moonlight Springs in 1900 for the Moonlight Springs Water Company. We did not have a tape-line with us when we measured the claim. We used the same system in pacing the end that we did at the side, and

(Deposition of Robert Lyng.)

if we got the side line short we also got the end line short. I did not do all the stepping; there would be one of us locating the corner, two men would be stepping from the center, one in each direction, so that in that way we might come considerable off the straight line.

Q. Now, did your claim as staked by you in November, 1898, include all the Moonlight Springs, the entire springs oozing from the ground?

A. No, I don't think it took in all the water in this part (pointing to points XX and 5).

Q. And state whether or not it included the main Moonlight spring, where the waterworks now get their water. A. It did.

Recross-examination.

(By Mr. COCHRAN.)

Jensen informed me that what he called my north-east corner had been moved over onto his No. 6 Good Luck, and showed it to me. I don't know that I identified the stake as my own stake. I identified it as the Moonlight claim stake.

Q. It was up toward the point marked 5, wasn't it? A. It was up in that direction or point XX.

Q. How far was it from the Jensen claim?

A. I don't recollect that. [299]

Q. About how far, two hundred feet?

A. I don't know whether it was two hundred feet or more or less.

Q. You know it was on the Jensen claim though?

A. Yes.

(Deposition of Robert Lyng.)

Re-redirect Examination.

(By Mr. GILMORE.)

Q. Now, the stake that you said Jensen pointed out to you, who put that stake at that place?

A. I don't know.

Q. You don't know whether Davidson, the surveyor, put it there or not?

A. I don't know. (Continuing:) I never talked to Mr. Davidson about it. I never gave Mr. Davidson or anyone else permission to move my stake. They did not move my stake to my knowledge. I could not swear that the stake Jensen pointed out to me had been moved at all or not. [300]

**[Testimony of Arthur Gibson, for Defendants
(Recalled).]**

ARTHUR GIBSON, recalled by defendants.

Direct Examination by Mr. GILMORE.

Q. Please examine the exhibit that I hand you, Mr. Gibson, and state if you know what it is.

A. I do.

Q. Who made the blue-print?

A. I did. (Continuing:) It was made from surveys on the ground by me; it was partially made from surveys on the ground by me from survey notes made by me.

Q. Is that a copy of the map furnished to Mr. Kingsbury of the survey of the Grant claim on September 30, 1902? A. Yes.

Mr. COCHRAN.—I would like to cross-examine him.

The COURT.—Proceed.

(Testimony of Arthur Gibson.)

Q. Mr. Gibson, is the line delineated to point W on that map a corner of the Lyng claim from a survey made by you? A. No.

Redirect Examination.

(By Mr. GILMORE.)

Q. What do you know of it, where did you get your information?

A. Mr. Lyng, while Mr. Lyng was in the ground.

Q. And you surveyed that point on that map for the owner of No. 6 Good Luck, didn't you?

Mr. COCHRAN.—Objected to as leading.

Mr. GILMORE.—He is an adverse witness.

The COURT.—There is nothing to show that he is an adverse witness.

Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [301]

Mr. GILMORE.—I offer the map in evidence, if the Court please.

The COURT.—It may be received for illustrative purposes and marked Defendants' Exhibit 31 for illustration. [302]

Defendant's Exhibit 31

Exhibit A of deposition

To U.S.M.M. N. 10
N 35° 57' 30" E 668.9
To SE (or Discover)
Anvil Peak 130

2

S 50° 27' E 576.6

0 St. 1

NAPA
15 45 Acres

S. 32° 20' W. - 1126.9

Wild Goose Co. Water Main from Pumping plant

Mr. GILMORE.—I want to inform the Court that at the time Mr. Lyng was first examined he was to leave on the “Senator,” but for some reason he did not go away for a week or two and he went out to the claim, and I recapped him and retook his deposition.

The COURT.—The deposition may be read.

[Deposition of Robert Lyng.]

Direct Examination.

(By Mr. GILMORE.)

Q. Mr. Lyng, you didn't go away from the District of Alaska as soon as you expected? A. No.

Q. For what reason?

A. Well, a few matters that were not wound up that I stayed over for. (Continuing:) It is my intention to leave within the next few days for the outside on the steamer “Senator.”

Q. Since the taking of your deposition, state whether or not you have visited the vicinity of the ground in controversy in this action.

A. I have.

Q. At whose request? A. At Mr. Gilmore's.

Q. And when was your visit to the ground, can you give approximately the dates?

A. I could not give the date, but it was some days after my deposition was taken, possibly a week later.

Q. Now, at the time you visited the ground, state whether or [304] not you examined any mounds or stakes in the vicinity of Moonlight Springs.

A. I did. (Continuing:) I examined the initial stake of the Moonlight claim and the corner down towards Little Creek. I guess it would be the

(Deposition of Robert Lyng.)

southeast corner of the Moonlight claim, the claim that I originally staked.

Q. Now, Mr. Lyng, from the examination that you made of the ground in that vicinity, state whether or not the southeast corner of the Lyng claim and the initial stake of the Lyng claim, as found by you on the ground at the time you made your investigation recently, were in the same place as staked by you at the time you located the claim in 1898.

A. Yes, sir; they were.

Q. And where was the initial stake or mound found by you on your inspection with reference to where you put that stake and mound at the time you located your claim in 1898?

A. It was in the same place.

Q. And at that time did you observe the Moonlight Springs, what is known as the dam or Moonlight Springs on the ground?

A. Yes, I did. (Continuing:) I don't remember how many years have elapsed since I was there before, it must be seven or possibly eight years. I wasn't able to identify my northeast corner stake towards Anvil mountain. I saw a stake there supposed to be the northeast corner. I did not have any trouble in locating my initial stake or my southeast corner. I don't recall now that I paid any attention, any particular attention, to the Grant stake in 1899 outside of the initial stake. I [305] know that the Grant initial stake was identical with mine.

Q. Referring to the southeast corner towards Little Creek, state whether or not you ever observed

(Deposition of Robert Lyng.)

any stakes of the Grant claim at that point.

A. I did.

Q. And what character of stake was it?

A. A willow stake.

Cross-examination.

(By Mr. COCHRAN.)

I don't remember the exact date that I located the Moonlight claim, but it was in the last days of November or first days of December, 1898. I was on the ground again in the spring of 1899. I am certain that gold had been discovered on the claim. I am not positive about what time I made the discovery. I am not positive whether I made the discovery when we made our location or when I returned in 1899.

Q. State whether or not you did make a discovery of gold the day before or the day after you made your location.

A. A discovery of gold had been made before I made the location and I feel certain I prospected on the claim and found gold before I returned to Golovin.

Q. State whether or not you knew of that discovery before you located it. A. I did.

Q. And that was within the boundaries of the ground you located? A. Yes, it was.

Q. You knew this at the time you located?

A. Yes, sir. [306]

Q. You were not there when the discovery was made, were you, Bob?

A. Not this discovery that I refer to now.

Q. And that discovery, somebody told you they

(Deposition of Robert Lyng.)

had made a discovery of gold on the claim?

A. Yes.

Mr. GILMORE.—And who told you?

A. Lindblom.

Q. Whereabouts did he indicate to you he had found gold? A. Right below the springs.

Q. And do you know it to be a fact, of your own knowledge, that there is gold in large quantities where he indicated to you?

A. Yes, I have since found gold there myself.

Q. And state whether or not the ground has been mined and large quantities of gold extracted at the point where he indicated.

A. Yes, I have been told so.

Recross-examination.

(By Mr. COCHRAN.)

Q. Now, you say Mr. Lindblom told you that he had made a discovery of gold on the Moonlight claim?

A. Yes.

Q. And you only had his word for it?

A. At the time I made the location, yes. (Witness continuing:) I am not absolutely certain whether I panned the day following my location or not; I could not say. When I was out on the claim a few days ago I was unable to identify where my northeast corner was. I was at the southeast corner. [307] I don't know that I saw the stake that I put there originally. I do not know that I recognized any of the original stakes.

Q. Then, how do you recognize that as being the identical place where you put your southeast corner?

(Deposition of Robert Lyng.)

A. Well, just from where it should be, as far as I recollect.

Q. You might be mistaken about that, however?

A. Well, I don't think so. (Continuing:) It is swamp ground in there; there were no natural marks around it. The ground is practically the same for several hundred feet. I did not assume that to be the corner, because I saw the stakes; I thought that was just where it ought to be.

Q. You never saw any Grant stake except the one at your initial stake?

A. I would not say I never saw any others; I may have seen them all. I am not positive that I did. (Continuing:) Grant's initial stake was a willow stake. I don't recollect whether I ever saw a willow stake at the northeast corner of my Moonlight claim or not.

Redirect Examination.

(By Mr. GILMORE.)

Q. State whether or not you saw your upper corners of your claim in the year 1900. A. I did.

Q. Did you see the same corners in 1901?

A. I am not positive whether I did or not. (Continuing:) The upper corners of my claim were plainly marked on the ground and easily found, in 1900. I had no trouble in finding the same places where the corners stood in 1900 when I was on the ground recently. [308]

Q. State whether or not the southeast corner of your claim towards Little Creek was that corner that you recently identified as being in the same position

(Deposition of Robert Lyng.)

as the original corner of the claim as marked by Mr. Grant or indicated by Mr. Grant to you in 1899.

A. It was. [309]

Testimony of Francis M. Warsing, for Defendants.

FRANCIS M. WARSING, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Francis M. Warsing. I am an engineer and miner. I have mined in the Nome District near Moonlight and on Dry Creek. I know the Grant claim. I got acquainted with that claim in March, 1902. I was working on the Gaffney Fraction. The Gaffney Fraction is shown on Defendants' Exhibit No. 9, the blue-print attached to the wall. Also No. 2 East Fork. The Gaffney Fraction was adjoining placer claim No. 2 East Fork on Moonlight. I was working about four hundred feet, I should say, from the southwest corner of the Grant claim. I was living at that time a few hundred feet from the initial stake of the Gaffney Fraction. It would be near point represented by the letter "H" on Defendants' Exhibit 9. I was living in a board cabin 9x15 in size. I was in the employ of Captain John T. Hill at that time. I was his foreman. Billy Brittner, Van and Wagner were the men that were working under me. I went to work out there on the Gaffney Fraction in the early part of February, 1902, and continued to work in that place, in that vicinity until the 3d day of June, 1903. I continued to work

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in that vicinity on other claims after that until the fall of 1904, the middle of September. I was there continuously during that time except during the winter of 1903. In 1902 I was familiar with the westerly boundaries of the Grant claim. I knew, generally, where the Bob Lyng or Moonlight Springs claim was. The west end of the Grant claim and the east end of the Lyng claim joined. The [310] Grant claim was northeasterly from the springs. At that time I was over to the mounds and monuments of the Grant claim. During this trial I heard the evidence of witness that the corners were marked by mounds and stakes with painted figures. While I was out there I did not observe so much the figures, but the stakes and mounds I did.

I know a man named C. T. Howard. I know P. D. Winter and George Crawford. P. D. Winter was living in February, 1902, in the vicinity of No. 1 Above on Little Creek, about fifteen hundred feet from the Grant claim. I think George Crawford lived with him. In the summer of 1902 I observed Mr. Winter and Mr. Crawford working within the Grant claim boundaries. They were working on the westerly end. They were running an open cut. I know where the ground in controversy is, being the westerly end of the Grant claim. Winter and Crawford in 1902 were working within the ground in controversy. They worked there along the latter part of the summer, in August, I think. I also know George Doverspike, Fred Williams, Billy Schue and Mike O'Leary. In the fall of 1902 I observed all of

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those gentlemen with C. T. Howard, working on the Grant claim. I think it was in September, 1902. A short time after Crawford and Winter quit work. They went to work in the southwesterly end of the Grant claim, within the ground in controversy. I mark approximately the place where they were at work, on Defendants' map, Exhibit 11, and mark the place with the figures "66" with a circle around it. Those boys at that time were living on No. 2 East Fork, Moonlight. I mark the place on Defendants' map, Exhibit 11, where their cabin stood, with the figures "67" and a circle around it. Their cabin or habitation was about three or four hundred feet from mine where I lived. I visited them frequently that winter and I was there [311] at the place where they were working and in their works. They were digging shafts. They worked on several shafts. They commenced in the fall of 1902 and worked continuously until May, 1903. They were hoisting gravel near the shaft. I was at the bottom of their shaft. I did not go in their stopes. They took out six dumps.

Q. And state to the Court approximately the size of the dumps as near as you can recall, if you can do so. A. About 310 or 312 ten pan buckets.

The COURT.—You said 300 10 or 12 pan buckets in each dump?

A. In each dump. (Continuing:) They did sluicing and actual mining in the spring of 1903. They quit work in the spring of 1903 because an injunction was filed against them. A portion of the dumps

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were washed up, the balance remained. About five per cent of the dumps were washed up prior to the injunction that was served on them. The rest of the dumps were washed up in August, 1903, by Hopkins and Muther.

Q. State whether or not those dumps, that is, the portion that was unwashed or not sluiced up, remained in plain sight, open and notorious to any one passing over the ground, or around the ground, during the months of June and July, up to the time they were washed up.

Mr. COCHRAN.—Objected to as being a conclusion of law.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) The dumps were visible. I know Mr. Hopkins and I know Mr. J. C. Muther and I also know Mr. W. H. Bard. I first saw Hopkins and Muther working on the Grant claim [312] in August, 1903. Mr. Hopkins worked there about ten days on the southwesterly end of it, near the same place where Howard and Doverspike had worked. When Hopkins quit work Muther and Bard continued. They worked a little north of where the dumps were taken out and still within the ground in controversy. I lived out there during the month of September and first week in October, 1903, and I was in plain sight, where I was working, of the most of the Grant claim. There was no one else other than Mr. Hopkins and Mr. Bard working within the

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boundaries of the Grant claim at that time. If the Pioneer Mining Company had had any men digging in that portion of the claim near the point "S" on the map, in the latter part of September or first of October, I should have seen them from where I was, and I did not see anyone working there digging shafts or doing that character of work at that time. There was nobody else working there at that place on that part of the claim, at that time. Muther and Bard were working at that identical time, September and first part of October, 1903, within two hundred feet of the initial stake, or the point "S." Muther and Bard were living in the fall of 1903, just past the railroad. Mr. Hopkins did not have a cabin on the claim while he was sluicing. Muther and Bard lived in the month of September and October, 1903, on the Grant claim in cabins just above the railroad. On defendants' map, Exhibit 11, I indicate the place where the cabin was by the figures "68" with a circle around it. They lived there all the winter of 1903 and 4. In the winter of 1903 and 4 I was an engineer in the Golden Gate Hotel in Nome. Mr. Muther and Mr. Bard were sinking holes out there and prospecting on the Grant claim, and they extracted several small dumps. In the spring of 1904 they sluiced them up. In the summer of 1904 Muther and Hopkins worked the Grant claim. I [313] was running a gasoline engine for Roland Sutherland, near the Moonlight Springs. Sutherland was piping his water from the Moonlight Springs. Muther and Hopkins were working on the west end of the Grant

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claim, about four hundred feet from the springs. Roland Sutherland represented the Caribou Mining Company.

In the summer of 1904 I had an option for a lease from Muther on the Grant claim. The option was for eight days. I did some work on the Grant claim prospecting. Sank four holes nineteen to twenty-four feet deep on the southwesterly part of the Grant claim, within the ground now in controversy. The cabins are not still on the ground at the point "68," as I have shown on the map. Mr. Hopkins was living in those cabins at the time. I did not take up my option. After I gave up my option I observed further work done on the Grant claim in the fall or winter of 1904 and spring of 1905. The operations were carried on by Oscar Margraf and John Rieck. After they quit work I couldn't say who carried the operations on. Rieck and Margraf started their work in the fall of 1904. I don't know how long they continued to work there. I don't know how many men were employed by Muther and Bard. While I was out there I visited their cabins during the time they were working. I used to walk over occasionally. I was there many times.

Q. Mr. Warsing, did you ever hear of a claim out in that vicinity called Bench No. 1 off Moonlight?

A. I did not.

Q. Do you know a man by the name of Andrew Jensen? A. No, sir.

Q. During all the time, from February, 1902, up until the spring of 1905, state whether or not you

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ever heard or knew of any conflict between any other claim and the [314] Grant claim, the part of the Grant claim where this work was done.

A. No, sir, I did not.

Q. While you were working on the ground, Mr. Warsing, under your option from Mr. Muther, did any one molest you or interfere with you or complain that you were working on ground not belonging to the defendant?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I knew of a tunnel that was constructed on that portion of the claim. It was started in the fall of 1904 by Margraf and John Rieck. I was in the tunnel in the winter of 1904 and 5. They were in about seventy feet, I should judge, when I was there. The tunnel was on the southwesterly part of the Grant claim. It was bedrock work. It was on that part of the ground as shown on the big map, Defendants' Exhibit 11, at the point "C" and between figure 1 and figure "C" on Plaintiff's Exhibit "A." The general course of the tunnel was northeast. During all of the time that I was working in that vicinity, from February, 1902, until the spring of 1905, I did not see anybody else working in that vicinity other than the men that I have named and the laborers that worked for them.

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I know a claim in that vicinity called the Jerome Fraction. It lay in a westerly direction from where I was working for Captain Hill on the Gaffney Fraction. I was not acquainted with the southerly boundaries of the Bob Lyng claim. I knew the west end line of what was called the Caribou or No. 2 East [315] Fork claim. The Jerome Fraction adjoined a portion of the west end of No. 2 East Fork on Moonlight. On Defendants' Exhibit 9, the blueprint, I can indicate the Jerome Fraction. It is marked in letters running from point A to T, to Y and W, and back to 8. I first knew that claim in the summer of 1902. I have no interest in the result of this lawsuit or any interest in the ground in controversy. During the time that Mr. Hopkins and Mr. Bard were sluicing the dumps, that were left by Howard and Doverspike in August, 1903, they used a small gasoline engine and pump. They had their gasoline engine and pump down near the Moonlight Springs.

Cross-examination.

(By Mr. COCHRAN.)

I was foreman for Captain Hill, prospecting and drifting on the westerly portion of the Gaffney Fraction. I started to work there the latter part of February or first of March, 1902, and continued to prospect until the 30th day of June, 1903. I quit work then for Captain Hill altogether and came to Nome. I went to work at the Golden Gate Hotel after that, and worked twenty days in the month of June. I don't recall just at this time what I did do

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after that. I mined on St. Michaels creek in the early spring of 1904. After I quit work in the Golden Gate in June, 1903, I don't remember just now what I did do. I worked on part of the Congregational Church parsonage. After that I went to work at the Golden Gate. I helped to build the Golden Gate. I don't know whether I was in town during the winter of 1903, or not.

Q. Now, the fact of the matter is you don't know of your own knowledge whether or not Louis Stevenson, in the fall of 1903, was over in this portion of the Bench claim No. 1 on Moonlight and did any work?
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A. I never saw them. (Continuing:) I couldn't tell you where I was in the month of September, 1903. I was not out there for Captain Hill in September, 1903. I have no idea at this time where I was in the month of September.

Q. You are mistaken about September, 1903, in saying that Louis Stevenson couldn't have had any men there?

A. I don't know anything about that in September, 1903. I never saw them there.

Q. You were not around there in September, 1903, were you? A. I think I was.

Q. You don't know whether you were out there in September, 1903, do you Frank?

A. I was out there with Billy Brittner.

Q. Just went out there and came back?

A. He owned a small fraction out there.